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Supreme Court of the United States

OCTOBER TERM, 1941 1942

No. 1040 46

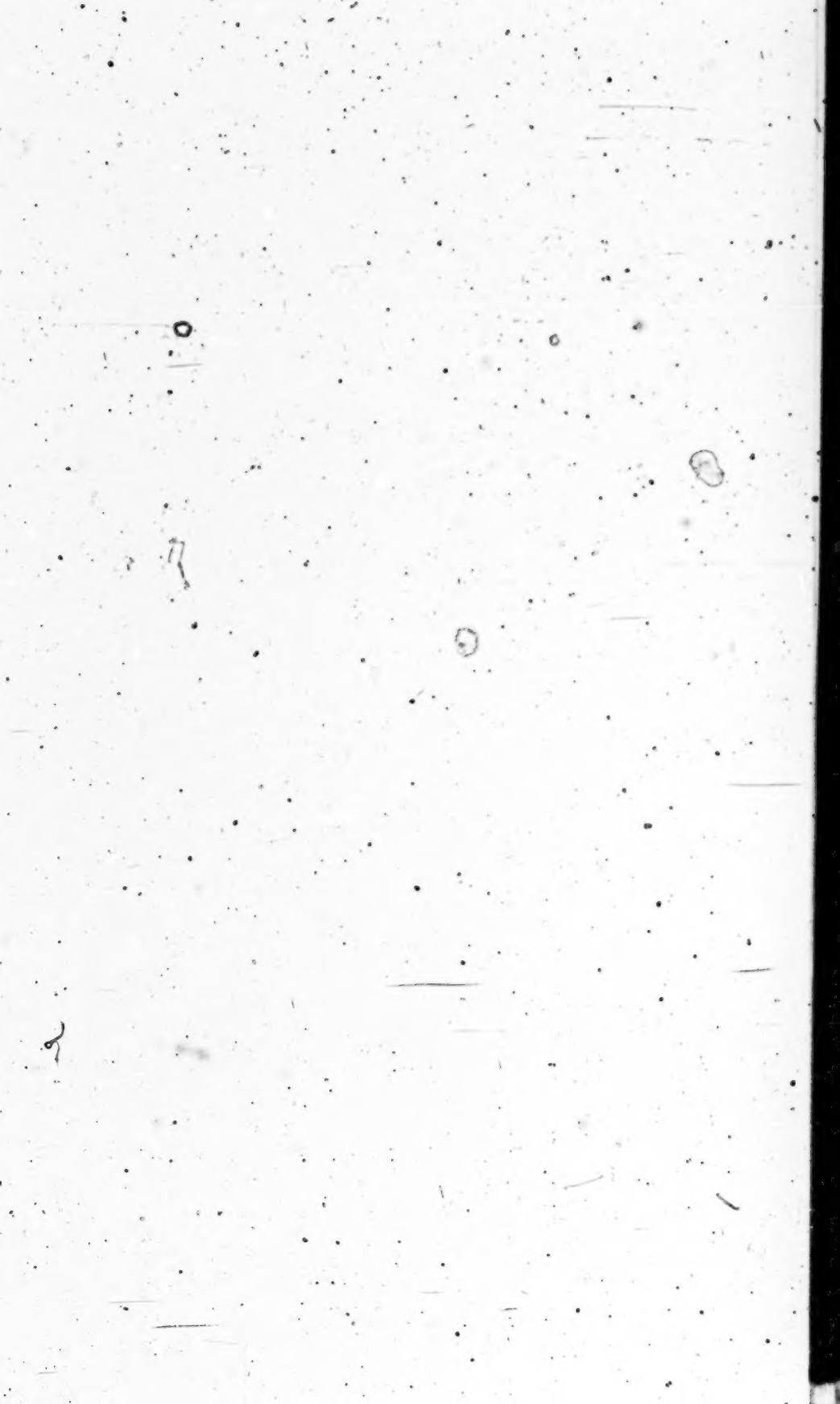
W. B. PARKER, DIRECTOR OF AGRICULTURE, AG-
RICULTURAL PRORATE ADVISORY COMMISSION,
RAISIN PRORATION ZONE No. 1, ET AL., APPEL-
LANTS,

vs.

PORTER L. BROWN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA

FILED MARCH 13, 1942.



SUPREME COURT OF THE UNITED STATES

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[fol. 1-78]

**IN DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA,
NORTHERN DIVISION**

No. 78 Civil

PORTER L. BROWN, Plaintiff,

vs.

W. B. PARKER, Director of Agriculture, AGRICULTURAL PRORATE ADVISORY COMMISSION, RAISIN PRORATION ZONE #1, Program Committee, W. B. Parker, Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, Preston McKinney, H. C. Anderson, A. K. Kelly, Renald Mastrofini, Alex Berg, Mesrob Mirigian, Melchoir Hansen, A. L. Davidson, W. J. Cecil, J. C. Harlan, One Doe, Two Doe, Three Doe, Four Doe, Five Doe, Six Doe, Seven Doe and Eight Doe, Defendants

AMENDED COMPLAINT FOR INJUNCTION—Filed December 28,
1940

Plaintiff, for cause of action against the defendants, alleges:

I

That jurisdiction is founded on the existence of Federal questions and amount in controversy; that the action arises under the Constitution of the United States, Article I, Section 8, Clause 3, and under Title 15, Sections 1 to 33 of the United States Code, as hereinafter more fully appears; that the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3000.00.

[fol. 79]

II

That defendant Raisin Proration Zone No. 1 is and at all times mentioned herein has been a proration zone organized under the Agriculture Prorate Act of the State of California; that by virtue of said act there now exists an Agricultural Prorate Advisory Commission composed of the following persons: W. B. Parker, Ira Redfern, Lyman

Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, and Preston McKinney; that the said W. B. Parker is Director of Agriculture of the State of California; that under said act there now exists a program committee of Raisin Proration Zone No. 1 composed of H. C. Anderson, A. K. Kelly, Renald Mastrofini, Alex Berg, Mesrob Mirigian, Melchoir Hansen, and A. L. Davidson; that the defendant W. J. Cecil is the zone agent of said zone.

III

That plaintiff is now and at all times herein mentioned was the owner of 100 acres of real property in the County of Fresno, which is in Raisin Proration Zone No. 1; that at all times mentioned herein plaintiff has had planted on said real property grapevines from which plaintiff has made and does now make raisins.

IV

That the program committee of said zone has attempted to institute a seasonal marketing program which defendants declared effective September 7, 1940; that defendants threaten to enforce said alleged seasonal marketing program against plaintiff; that said program provides briefly that all sub-standard raisins shall be withdrawn from the market; that 20% of the raisins produced by plaintiff and others shall be placed in a surplus pool and that plaintiff and others shall receive therefor the sum of \$27.50 per ton on delivery to said zone; that 50% of the raisins produced by said plaintiff and others shall be used by said zone as a stabilization pool and that said plaintiff and other growers [fol. 80] shall receive therefor on delivery to said zone the sum of \$55.00 per ton; that 30% of the raisins produced by plaintiff and said growers shall be called free tonnage and that said plaintiff and other growers may sell said free tonnage without restriction upon paying to said zone the sum of \$2.50 per ton for the privilege of selling such free tonnage; and that no packer or handler of raisins may purchase any standard or sub-standard raisins from any of the growers in said zone until said growers have complied with all of the foregoing requirements and received primary and secondary certificates from said zone evidencing such compliance.

3

V

That approximately 95% of the raisins grown by plaintiff and the other producers in Raisin Proration Zone No. 1 are sold in interstate or foreign commerce and that the raisins grown in said zone constitute approximately 95% of the naturally dried raisins produced in the United States; that plaintiff is deprived by reason of said act and program of his right to dispose of his raisins in interstate and foreign commerce.

VI

Plaintiff further alleges that heretofore plaintiff has engaged in the business of packing, shipping, and selling in interstate and foreign commerce raisins produced by himself and raisins purchased by plaintiff from other persons and that plaintiff desires to continue such business; that defendants in enforcing said act and program will compel delivery to said zone of all sub-standard raisins and 70% of standard raisins produced by all the growers in said zone as hereinabove specified; that under said program defendants will, unless enjoined, withhold from the normal channels of interstate commerce all sub-standard raisins and all raisins in said 20% surplus pool; that defendants under said program will, unless enjoined, withhold the raisins in said 50% stabilization pool from the channels of interstate commerce, allowing such raisins to enter said channels only [fol. 81] at such times and in such quantities as the defendants in their discretion shall determine; that under said program defendants will, unless enjoined, permit said 30% of free tonnage to enter interstate commerce only if said 70% of standard raisins and all sub-standard are delivered to said zone; that by reason of the foregoing defendants threaten a virtual embargo on the shipment in interstate commerce of raisins grown in said zone; that prior to the alleged adoption of said marketing program plaintiff entered into contracts to sell raisins in interstate commerce; that if defendants enforce said act and program, plaintiff will be unable to secure raisins with which to fulfill said contracts and plaintiff will be subjected to liability on said contracts in approximately the sum of \$8000.00 and will, in addition, lose profits on said contracts in approximately an equal amount; that plaintiff expects and will be able to ship out of this state during the current marketing season

2500 tons of raisins in addition to the raisins covered by said contracts; that as aforesaid, if defendants enforce said act and program, plaintiff will be unable to secure said 2500 tons of raisins for said shipment; that plaintiff would make a profit on said 2500 tons of raisins at the rate of from \$5.00 to \$12.00 per ton; and that unless defendants are enjoined from enforcing said program, plaintiff will lose such profit.

VII

That the 1940 raisin crop is now ready for the market and that the normal market for such raisins will be lost after December 20, 1940; that unless said program is quickly declared unconstitutional, the plaintiff and all the growers in said zone will be irreparably damaged by the loss of such market; that there is no adequate or speedy remedy at law to prevent such damage.

VIII

That said act and program provides civil and criminal [fol. 82] penalties so unusual, oppressive, and unreasonable that plaintiff will be precluded from asserting his rights independently and challenging in Court by defensive tactics the validity of said act and program; that plaintiff is therefore without adequate remedy at law; that if said program is enforced by defendant the value of plaintiff's vineyard and packing business will be irreparably impaired; that plaintiff is informed and believes that the enforcement of said program will cause to plaintiff an average loss of \$9.00 per ton per year on raisins grown by plaintiff; that the average annual tonnage of raisins grown by plaintiff is 200 tons; that plaintiff expects to continue producing such an annual tonnage for many years in the future and, plaintiff is informed and believes, defendants will continue said program in force for many years in the future unless enjoined.

IX

That as above stated said program provides that payment for raisins shall be made upon delivery of such raisins to said zone; that said zone is unable and unwilling to pay for such raisins on delivery; that therefore said program has never been placed in operation; and that defendants

should be enjoined from seeking to compel growers and packers to comply with said act and program.

X

Plaintiff is informed and believes, and therefore alleges:

That defendants will, unless restrained, attempt to enforce and procure the enforcement of, against plaintiff, the civil and criminal penalties provided in said act; that defendants will, unless restrained, attempt to enforce and procure the enforcement of the civil and criminal penalties provided in said act against growers from whom plaintiff purchases raisins and against other persons with whom plaintiff has dealings in raisins, thereby preventing plaintiff [fol. 83] from obtaining raisins for interstate shipment; that plaintiff has no adequate remedy at law whereby plaintiff can prevent the filing of civil or criminal actions against him or against said persons dealing with him.

XI

That defendants are maintaining at and near plaintiff's place of business watchers and spies for the purpose of ascertaining from whom plaintiff purchases raisins and for the purpose of intimidating such sellers and preventing the sale of raisins to plaintiff for shipment in interstate commerce; that the presence of such watchers and spies does intimidate such sellers and prevents such purchases.

XII

That plaintiff is informed and believes that approximately 100,000 tons have been delivered to defendant zone under said program, and plaintiff is informed and believes that defendants are now and intend to continue withholding said raisins from interstate commerce in restraint of trade and for the purpose of maintaining the monopoly prices.

XIII

That the true names of the defendants sued herein as One Doe, Two Doe, Three Doe, Four Doe, Five Doe, Six Doe, Seven Doe, and Eight Doe are not known to this plaintiff and that plaintiff prays leave of this Court to insert their true names when they become known to him.

Wherefore, plaintiff prays judgment as follows:

1. That a Temporary Restraining Order issue restraining and enjoining the defendants from doing any of the following acts:

(a) Enforcing or attempting to procure the enforcement of, in any manner, against plaintiff the said act or program;

(b) Enforcing or attempting to procure the enforcement [fols. 84-107] of, in any manner, the said act or said program against any grower in said zone from whom plaintiff purchases raisins, or against any other person with whom plaintiff has dealings in raisins on account of such purchases or dealings;

(c) Maintaining watchers or spies within sight of plaintiff's place of business and having watchers or spies following persons with whom plaintiff has dealings in raisins.

2. That after a trial of this action a permanent injunction be issued restraining and enjoining the defendants from doing any of said acts.

3. That plaintiff be awarded such other and further relief as may be just and proper; and that plaintiff be allowed his costs of suit.

_____, _____, Attorneys for Plaintiff.

Duly sworn to by Porter L. Brown. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 108] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER TO FIRST AMENDED COMPLAINT—Filed Feb. 25, 1941

Come now all of the defendants, and each of them, in the above entitled action, and answering plaintiff's first amended complaint herein, admit, deny and allege as follows:

I

Deny each and every averment contained in paragraph I of said first amended complaint.

II

Admit the averments contained in paragraph II of said first amended complaint.

III

Admit that plaintiff is and was at all the times mentioned in the first amended complaint herein, a "producer" of raisins in the County of Fresno as said term "producer" is defined in the Agricultural Prorate Act of the State of California, and that he is and was — all such times the pur- [fol. 109] ported owner of real property in said county upon which there were planted grape vines from which raisins were made and allege that except as herein otherwise expressly admitted, defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraph III of said first amended complaint.

IV

Admit and allege that defendants, pursuant to the marketing program for raisins as amended in effect in said Raisin Proration Zone #1, did approve and adopt a seasonal marketing program for raisins for 1940-1941, effective September 7th, 1940, and that defendants have enforced and intend to enforce such seasonal marketing program for raisins against plaintiff and all other persons subject to the provisions thereof. That said seasonal marketing program provides that 20% by variety of all standard raisins of the 1940 crop produced in said Zone #1 shall be delivered into a surplus pool and that an advance shall be made on such raisins at the time of delivery of \$27.50 per ton for Muscats and Thompsons and \$25.00 per ton for Sultanas, to be obtained from the proceeds of a non-recourse loan from the Federal Commodity Credit Corporation, and that 50% by variety of all such standard raisins shall be delivered into the stabilization pool and that an advance shall be paid to growers upon such raisins of \$55.00 per ton for Muscats and Thompsons and \$50.00 per ton for Sultanas to be made from the proceeds of a non-recourse loan from said Federal Commodity Credit Corporation; and that it is further provided that the balance of each producer of 1940 crop tonnage of approximately 30% thereof may be disposed of at the

[fol. 110] discretion of the producer thereof upon the issuance to such grower of secondary certificates for which a fee of \$2.50 per ton is required; and that it is further provided therein that no sub-standard or inferior grade raisins may be offered as free tonnage or delivered to the stabilization or surplus pools, but that such raisins shall be delivered into separate pools for disposal by the program committee at the best prices and under the fairest conditions obtainable, and that the net proceeds thereof shall be distributed at the earliest possible date to each grower contributing; and that all packers and handlers of raisins are prohibited from purchasing any raisins from producers in said zone until such producers have complied with the foregoing requirements and received primary and secondary certificates evidencing such compliance. Defendants further allege that under the said marketing program for raisins, as amended, and the said seasonal marketing program for 1940-1941 they arranged for and obtained a loan from said Commodity Credit Corporation, a Federal lending agency, and that as of January 22nd, 1941, there had been delivered into said stabilization and surplus pools 107,587 tons of 1940 crop raisins produced in said zone, which in accordance with the provisions aforesaid of said seasonal marketing program entitled the growers thereof to a total aggregate advance of \$5,065,137.00; and that as of said January 22nd, 1941, there had been actually so advanced and paid to such growers the total aggregate sum of \$4,908,000.00, and that the balance thereof was in process of being so advanced upon the completion of necessary details and papers in connection therewith. Except as herein otherwise expressly admitted and set forth, defendants deny each [fol. 111] and every averment contained in paragraph IV of said first amended complaint.

V

Allege that it is and has been continuously the practice in the raisin industry in the State of California and in said Raisin Proration Zone #1; both before and since the institution of a raisin proration program under said Agricultural Prorate Act, for producers of such raisins to sell and deliver all raisins sold and delivered by them to packers and handlers operating in the State of California and that thereupon such packers and handlers operating and doing

business within said State of California, store said raisins anywhere from a few days to a couple of years within said State and otherwise process the same in said State before disposing thereof, and then ultimately sell and deliver such raisins to the trade, both intrastate and interstate, and that a substantial amount of such raisins are ultimately shipped out of the State of California, all of which takes place at a considerable interval after the producers of said raisins have parted with the same and have lost all right, title or interest therein; and other than as herein expressly alleged and set forth, defendants deny each and every averment contained in paragraph V of said first amended complaint.

VI

Admit that plaintiff has been engaged in the business of packing, shipping and selling raisins in intrastate, interstate and foreign commerce, and that some of such raisins were produced by plaintiff and the balance thereof plaintiff purchased from other producers and was engaged as a packer and handler of such raisins; and admit that so far [fol. 112] as defendants know plaintiff presumably desires to continue such business. Admit that defendants will not market sub-standard raisins in competition with other raisins, and that they will not issue primary or secondary certificates to producers of raisins unless and until such producers have delivered 50% of their 1940 crop into the stabilization pool and 20% into the surplus pool. Allege that a substantial portion of the raisins delivered to the stabilization pool have already been disposed of. Except as herein otherwise expressly admitted and alleged, defendants deny each and every averment contained in paragraph VI of said first amended complaint.

VII

Deny each and every averment contained in paragraph VII of said first amended complaint.

VIII

Allege that defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that the average annual tonnage of raisins grown by plaintiff is 200 tons, that plaintiff expects to continue pro-

ducing such an annual tonnage for many years in the future and that defendants will continue said program in force for many years in the future unless enjoined; and other than as herein alleged, defendants deny each and every averment contained in paragraph VIII of said first amended complaint.

IX

Deny each and every averment contained in paragraph IX of said first amended complaint.

X

Admit that defendants will to the best of their ability, [fol. 113] unless restrained, endeavor to enforce and procure the enforcement of all of the provisions of the Agricultural Prorate Act and of the proration program for raisins thereunder against plaintiff and all other persons subject thereto by all of the means provided by law; and other than as herein expressly admitted, deny each and every averment contained in paragraph X of said first amended complaint.

XI

Deny each and every averment contained in paragraph XI of said first amended complaint.

XII

Allege that as of January 22nd, 1941, there had been delivered into said stabilization and surplus pools 107,587 tons of 1940 crop raisins produced in said zone; and other than as herein expressly alleged, deny each and every averment contained in paragraph XII of said first amended complaint.

XIII

Admit the averments contained in paragraph XIII of said first amended complaint.

And for a further and first affirmative defense defendants allege as follows:

XIV

That plaintiff is estopped to attack the constitutionality and to attack the validity of the Agricultural Prorate Act and of the proration program for raisins thereunder and of the seasonal program for 1940-1941, and each of them,

in that said plaintiff ever since the institution of such a proration program for raisins on or about August 4th, 1937, a copy of which program is attached hereto marked Exhibit "A", hereby referred to, and made a part hereof, has dealt [fol. 114] with defendant, Raisin Proration Zone No. 1, and the other defendants named herein, and has voluntarily participated in such proration program for raisins and has received and accepted the benefits thereof and has voluntarily applied for and received and accepted primary and secondary certificates for his raisins thereunder and has had and claimed the benefit of the operation of the proration program for raisins and of the Agricultural Prorate Act, and each and all of the provisions thereof.

And for a further and second affirmative defense, defendants allege as follows:

XV

That plaintiff is barred by the provisions of Section 17 of the Agricultural Prorate Act of the State of California from prosecuting this action and from prosecuting any and all alleged causes of action set forth herein, in that, each and every order and action of the defendants, or any of them, herein complained of became effective more than thirty (30) days prior to the commencement of this action.

And for a further and third affirmative defense, defendants allege as follows:

XVI

That plaintiff is guilty of laches in the commencement and prosecution of this action, and both thereof, in that Raisin Proration Zone No. 1 was instituted on or about August 4th, 1937, and has continuously operated since said time and that on said date a proration program for raisins was instituted and approved under and pursuant to the provisions of the Agricultural Prorate Act of the State of California, which said program as amended and altered, has been in effect ever since said date. That in the operation of said program and of said zone defendants have set up an office and staff and have incurred expenses and obligations and entered into contracts and have procured a loan from the Commodity Credit Corporation of the United States, a Federal lending agency, of approximately \$8,000,000.00 for the benefit of the producers of raisins in

said zone, and have paid and disbursed to such producers a major portion of said amount, and that plaintiff has at all times since August 4th, 1937, had knowledge of the operations and activities carried on and undertaken by defendants in connection with said Raisin Proration Zone No. 1 and said program and has had knowledge of the terms of said proration program for raisins, and has since said date stood by while defendants have operated said zone and said program at the expense of the raisin producers within said zone who have paid the cost of this operation in accordance with the terms of the raisin proration program and of said Agricultural Prorate Act, and that defendants have had to employ and train and have employed and trained a substantial personnel for the operation and administration of said program, and now have a substantial investment in the necessary facilities purchased and developed for such operation and administration, and that if such defendants are prevented from continuing the operation and administration of said program and of said zone, such investment will be a loss and large numbers of employees will be deprived of work, and the raisin industry and the producers of raisins in said zone and the people of the State of California at large [fol. 116] and the said Commodity Credit Corporation will suffer irreparable damage and untold injury and hardship.

And for a further and fourth affirmative defense, defendants allege as follows:

XVII

That the California Agricultural Prorate Act and the proration program for raisins thereunder as set forth in Exhibit "A" attached hereto, and the seasonal marketing program for 1940-1941, and each thereof, operate upon the harvesting and preparation for market of raisins prior to the time that any shipment and commerce takes place or begins and before any movement whatsoever of said raisins in either intrastate or interstate commerce. That neither the said Act nor the said program in any manner whatsoever burden, obstruct, or hinder interstate commerce in raisins but that the same benefit, foster and materially help interstate commerce and tend to increase the ultimate movement of raisins and the amount thereof in such interstate commerce and to regulate an even flow and movement thereof in such interstate commerce, and particularly that by rea-

son thereof dealers and consumers in states other than California, as well as in California, know that at all times there is on hand and available an ample regulated supply of good wholesome raisins of "standard" quality and grade free from impure and substandard fruit. That Federal statutes provide for the fostering and benefit of interstate commerce by cooperation with State officials in the regulation of agricultural surpluses and for loans to assist in taking care of such surpluses and that the Federal Government has recognized the benefit and help to interstate commerce [fol. 117] of the said proration program for raisins and that for the purpose of assisting in said program and thus benefiting and fostering interstate commerce in raisins the Commodity Credit Corporation, a Federal lending agency, has entered into an agreement with defendant, Raisin Proration Zone No. 1, to loan approximately \$8,000,000.00 to said zone for distribution to the producers of raisins therein upon their compliance with the terms of the said raisin proration program, and that such money has actually been loaned and a major portion thereof distributed to such producers. That a surplus of raisins exists and has existed at all of the times herein mentioned, and that such surplus is and has been at all of such times of such extent and amount as to threaten and endanger the producers of raisins in California with ruin and bankruptcy.

Wherefore, defendants pray judgment that plaintiff take nothing by his first amended complaint herein, and that defendants recover their costs and disbursements herein, and for such further and other relief as to the court shall seem proper.

Earl Warren, Attorney General of the State of California, by Walter L. Bowers, W. R. Augustine, Gilbert F. Nelson, Deputies Attorney General; 903 [fols. 118-161] State Building, Los Angeles, California, Tele: Madison 1271, Attorneys for W. B. Parker as Director of Agriculture, Agricultural Prorate Advisory Commission, and the members thereof; J. C. Harlan. Strother P. Walton, 407 Pacific Southwest Building, Fresno, California, Telephone: 2-9918, Attorney for defendants Raisin Proration Zone #1; Program Committee of Raisin Proration Zone #1 and the members thereof; W. J. Cecil.

(Exhibit "A" to answer omitted in printing. See exhibit 1 of statement as to jurisdiction.)

[File endorsement omitted.]

[fol. 162]

JOINT EXHIBIT

IN DISTRICT COURT OF THE UNITED STATES.

[Title omitted]

STIPULATION AS TO CERTAIN FACTS—Filed April 11, 1941

The parties hereto hereby stipulate to the following facts:

1. That defendant and cross-complainant, Raisin Proration Zone No. 1, hereinafter sometimes referred to as the "Zone", is and has been since August 3, 1937, a Proration Zone organized and existing pursuant to the provisions of the Agricultural Prorate Act of the State of California, (Chapter 754, Statutes of 1933, as amended) for the purpose of applying the provisions of said Agricultural Prorate Act to an agricultural commodity, to-wit, raisins, being unbleached, sun-dried or partially sun-dried grapes of the [fol. 163] Thompson Seedless, Sultana, and Muscat varieties grown and produced in the said Zone, consisting of the Counties of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings and Kern within the State of California.

2. That there are approximately 240,000 acres in said Zone devoted to the growing of grapes utilized wholly or in part for the manufacture of raisins, which acreage is held and operated by approximately 10,000 producers, the average individual holding of each producer being about 25 acres.

3. That the average annual production of such natural sun-dried Thompson Seedless, Sultana and Muscat raisins within said Zone during the five year period, 1935-1939, inclusive was approximately 205,600 tons. The yearly production over the period 1935-1940, inclusive has been approximately as follows:

Year 1935	177,000 Tons
" 1936	164,000 "
" 1937	222,000 "
" 1938	256,000 "
" 1939	209,000 "
" 1940	158,000 "

That during said five year period, 1935-1939, the distribution of such raisins in normal trade channels has averaged approximately 185,000 tons annually.

4. The producer of grapes is generally either the owner or the lessee of the land upon which the grapevines are located. He plants, cultivates, irrigates, sprays, and tends the vines upon which the grapes are grown and when ready picks the same. Such grapes may be sold as fresh fruit or for wines or prepared as raisins, and the amount utilized for these different purposes varies considerably from year to year both in the aggregate and with the individual producers. The producer picks the bunches of grapes to be utilized for raisins and spreads them on trays laid between the rows of vines, turns the trays from time to time, and finally dumps the dried contents into sweat boxes or picking boxes. The producer grades the same for quality and to eliminate sub-standard and inferior raisins and some- [fol. 164] times leaves this to be done for him by the packer before the latter takes delivery. When the producer is ready to deliver his raisins, he hauls the same, or employs independent truckers to haul the same, in sweat boxes or picking boxes to the packing plant, or in some cases the packer calls and takes delivery of the same in the vineyard.

5. There are approximately forty packers of raisins within the State of California, all of whom have packing plants and places of business located within the Zone. They make all their purchases and take all their deliveries of raisins within the State of California.

6. All raisins sold by producers are sold to such packers in the State of California. Sale is completed when delivery is made and practically all sales are cash transactions, the producer receiving full payment for all raisins delivered immediately or within a ten day period.

7. When the raisins are delivered by producers to such packers, they are cured but have not been subjected to any

cleaning or other treatment. When delivered in such sweat boxes or picking boxes to the packer, the raisins are in clusters attached to the dried stems upon which they matured, except such as have fallen from said stems and have generally still attached a portion of the stem.

8. When the current crop of raisins is sold and delivered by the producers to the packers, the latter have on hand a substantial carry-over of raisins from the crop of the preceding year or two, which they endeavor to dispose of before selling the current crop. This carry-over is not held uniformly by the packers. The bulk of said carry-over is generally held among the larger packers. The balance is distributed among the smaller packers, although some of them carry over no inventory. The raisins received from [fol. 165] the producers are stored by the packers in containers upon the premises of the latter and are held by him in such containers for periods varying from a few days up to two years. The bulk of the raisins carried over for longer periods of time is carried over by the larger packers, some of the smaller packers carrying over no inventory from season to season. The packer at any time or at various times during this period removes the raisins from such containers and prepares the same for commercial sale and distribution to the public by cleaning, stemming, cap-stemming, seeding (muscats only), grading, sorting and packaging in various sized containers. This stipulation does not cover the treatment of Muscat layers.

9. When such raisins are so prepared for commercial sale and delivery, the packer delivers the same to jobbers, wholesalers, brokers, distributors, and dealers for resale and distribution to the public. Such raisins are ultimately consumed both within and without the State of California, but 90-95% of the raisins consumed as raisins, and for human consumption are ultimately consumed outside of the State of California.

10. That from the time of the delivery of raisins by the producer to the packer, as set forth herein, the preparation, care, handling, selling and distributing of such raisins is carried on by such packer and all subsequent purchasers and handlers independently of the producer and entirely free from any control or direction of such producer. That the raisins of the various producers delivered to any

packer are commingled and no producer has any knowledge of the subsequent movement or ultimate use or consumption of the particular raisins delivered by him and has no right, title or interest in any of such raisins after the sale [fol. 166] and delivery by him to the packer. This procedure is carried on by the packer independently of the producer of the raisins who has no knowledge nor means of knowledge as to the ultimate disposition of his particular raisins or as to whether the same ultimately move in intra-state or inter-state commerce, except that at times certain producer-packers ship some of their own production directly into inter-state commerce.

11. That a large percentage of the raisins produced within the Zone is sold and delivered to packers within ninety days after the start of the delivery season which ranges from September 15th to September 30th. Generally speaking, the producer of raisins is forced to sell and deliver his raisins during this period as soon as the raisins have been cured in order to procure funds with which to finance his operations and his succeeding crops. That some producers contract for the sale of their raisins several weeks in advance of the delivery of said raisins. That the holding and storing of raisins is usually done in the hands of the packer. That during the past several years the producers of raisins in the State of California have supplied a large surplus over and above the normal market demand therefor, and that there has been an excessive carry-over of raisins from year to year from the previous crop. That as of September 1, 1940, there was a carry-over of approximately 70,000 tons of raisins of the 1938 and 1939 crops in the possession of packers in the State of California. That for the past several years and at all times since the marketing program for raisins under the Agricultural Prorate Act became effective on August 3, 1937, there have been in the hands of packers large supplies of raisins in excess of the demand therefor and in amounts of not less than 30,000 to 40,000 tons more than such packers were able to sell and dispose of, and that such packers have been at all of such times abundantly able to [fol. 167] supply all orders and demands for raisins, both from within and from without the State of California. That of such demand approximately 25% thereof came from for-

eign countries, and that such foreign demand has been practically eliminated since October of 1939. That during the past several years the Federal Government has sought to aid and alleviate the condition of the raisin industry in California by supplementing the normal demand and distribution with purchases by the Federal Surplus Commodities Corporation now the Surplus Marketing Administration of approximately 102,500 tons of raisins of the 1937, 1938 and 1939 crops—35,000 tons of which were of the 1939 crop.

12. That pursuant to the provisions of the Agricultural Prorate Act a proration program for raisins in said Zone was instituted August 4, 1937, and continued in effect until it was amended effective July 23, 1940, by the marketing program for raisins as amended, as set forth in Exhibit "A" attached to the Answer to First Amended Complaint herein, which program as thus amended ever since has been and still is in force and effect. That pursuant to the provisions of said program, as set forth in said Exhibit "A", and particularly under the terms of Article III thereof, a seasonal marketing program for raisins for 1940-1941 was duly and regularly adopted and approved effective September 7, 1940, which seasonal program is and has been ever since said date in force and effect in said Zone.

13. That the essential features of said 1940 seasonal marketing program for raisins, together with the financing arrangement, are as follows:

(a) That 20% by variety of all "standard" raisins of the 1940 crop produced within the Zone shall be delivered by the producers into a surplus pool; and that an advance shall be made to producers on such raisins at the time of delivery by such producers of \$27.50 per ton for Muscat [fol. 168] and Thompson Seedless raisins, and \$25.00 per ton for Sultanas, to be obtained from the proceeds of a non-recourse loan from Commodity Credit Corporation.

(b) That 50% by variety of all such "standard" raisins shall be delivered into a stabilization pool; and that an advance shall be made to producers upon such raisins at the time of delivery by such producers of \$55.00 per ton for Muscat and Thompson Seedless raisins, and \$50.00 per ton for Sultanas, to be obtained from the proceeds of said non-recourse loan from Commodity Credit Corporation.

(c) That the balance of such standard raisins, to-wit: 30% of each producer's standard raisins, may be disposed of by him without restriction into a primary channel of trade as "free tonnage", provided he has obtained a secondary certificate therefor, which certificate is issued to him when he has satisfied the pool requirements and upon payment of the certificate fee of \$2.50 per ton for each ton of the "free tonnage" (30%) of his 1940 production of "standard" raisins.)

(d) That no "Sub-standard" or "inferior" grade raisins may be offered as "free tonnage" or delivered to the surplus or stabilization pools, but that such raisins shall be delivered into separate pools for disposal by the Program Committee at the best prices and under the fairest conditions obtainable for by-product purposes and that the net proceeds thereof shall be distributed ratably to the producers contributing to such pools.

14. That Commodity Credit Corporation is a corporation organized pursuant to the laws of the United States of America for the purpose of making loans upon agricultural commodities that are recommended by the Secretary of Agriculture of the United States and approved by the President of the United States. That prior to September 7, 1940, the defendants herein had been negotiating with the officers of said Commodity Credit Corporation for the [fol. 169] purpose of securing financial assistance for producers of 1940 crop raisins in the State of California. That subsequent to September 7, 1940, Commodity Credit Corporation executed a loan agreement with the Zone, by and under the terms of which Commodity Credit Corporation agreed to supply the funds for making the advances to producers set forth in the preceding paragraph hereof. That the existence of said Zone and the institution of said raisin program and the adoption and approval and operation of said seasonal marketing program constituted conditions precedent upon which such loan was made. That said loan agreement ever since has been and now is in full force and effect and has been performed by the parties thereto with certain minor modifications which have been made in said agreement relating to the mechanical details of operation, and which details the parties hereto do not consider of any materiality to the issues in this case. That

it was a condition of said loan agreement that each individual producer delivering raisins to the surplus and stabilization pools and desiring to avail himself of the non-recourse loans provided by said agreement, should be required to execute in writing a producers' consent to pledge, by and under the terms of which the producer authorized the Zone and the Program Committee to pledge to Commodity Credit Corporation the raisins so delivered by him as collateral for said loans; the raisins delivered to one pool, however, not being pledged as collateral for any loan made upon raisins delivered to the other pool.

15. That pursuant to the provisions of the Agricultural Prorate Act and in accordance with the terms of the Raisin Program set forth in Exhibit "A" of the Answer to First Amended Complaint, and particularly Article X thereof, the Program Committee duly established and declared effective the grades and rules and regulations governing the same for "standard" raisins, which same became effective September 10, 1940, and ever since have been and [fol. 170] now are in force and effect. This in conjunction with the definitions in Article I of the Program set forth in said Exhibit "A" fixes the quality and grades for "standard", "sub-standard" and "inferior" raisins of the 1940 crop.

16. That plaintiff is and has been a producer of raisins in said Zone prior to and ever since the institution of a proration program for raisins therein on August 4, 1937. That as such a producer of raisins plaintiff has dealt with the defendant Raisin Proration Zone No. 1, and voluntarily participated in said program during the 1938 crop season year and applied for and received and accepted primary and secondary certificates for his raisins for such crop year. That during the year 1938, he was a producer only of raisins, but in the year 1939, he became a packer and since then has been and now is both a producer and packer of raisins. That no seasonal program for raisins was adopted for the crop year 1939, and no restrictions for said crop year were made under said program. That for the crop year 1940, the plaintiff did not apply — nor receive any primary or secondary certificates for his raisins and has refused to apply for the same, and has not participated in said 1940 seasonal program in any manner whatsoever.

That the 1938 seasonal marketing program for raisins differed from the 1940 seasonal program in that the 1938 seasonal program did not have a stabilization pool requirement, and had a 20% Surplus pool the same as the 1940 seasonal program.

17. That up to and including March 14, 1941, there had been delivered to the Surplus and Stabilization pools pursuant to the terms of said 1940 seasonal program for raisins an aggregate of 108,836 tons, of which 102,346 tons were of the Thompson Seedless variety, 4,948 tons of the Muscat variety and 1,542 tons of the Sultana variety. That of said [fol. 171] total tonnage 31,096 tons were delivered to the Surplus pool and 77,740 tons were delivered to the Stabilization pool. That said raisins were delivered by approximately 7,100 individual producers.

18. That pursuant to the terms of the 1940 raisin loan agreement with Commodity Credit Corporation there is available to producers upon the tonnage so delivered and covered by authorizations to pledge, an aggregate non-recourse loan of \$5,211,000.00. That as of March 14, 1941, \$5,098,000.00 (amounting to 99.98%) had been actually disbursed to the producers delivering said tonnage, and that the balance was in process of being paid.

19. That as of March 14, 1941, the total deliveries of raisins into the two pools with the corresponding free tonnage of 46,644 tons, totals 155,480 tons. That the estimate for the total 1940 crop is 158,000 tons.

20. That as of the 28th day of March, 1941, packers had purchased from the Stabilization pool 49,455 tons of Thompson Seedless raisins, 1,100 tons of Sultana raisins and 3,075 tons of Muscat raisins, being approximately 70% of the total tonnage delivered into said Stabilization pool. That said packers purchased said raisins at a price of \$60.00 per ton for Thompson Seedless raisins, \$62.50 per ton for Muscat raisins and \$55.00 per ton for Sultana raisins.

It is hereby stipulated that the foregoing, shall for the purposes of this case, be accepted and considered as a true and correct statement of the facts set forth herein, subject to the objections of any party hereto as to any portion or portions thereof as to the materiality, relevancy, and competency, and provided that any of the parties hereto may

augment or otherwise introduce evidence in addition thereto, but not contrary or contradictory to any of such facts. Nothing herein shall preclude the Court from exercising its [fols. 172-173] views as respects to judicial knowledge.

Dated: April 10, 1941.

Irvine P. Aten, Richard V. Aten, G. L. Aynesworth,
Attorneys for Plaintiff. Earl Warren, Attorney
General of the State of California, by Walter L.
Bowers, M., Deputy, Strother P. Walton, Attorneys
for defendants.

[fol. 174] (Endorsed:) Filed Oct. 16, 1941. R. S. Zimmerman, Clerk. By R. B. Clifton, Deputy Clerk.

Copy

State of California, Legal Department

September 17, 1941.

Honorable Albert Lee Stephens, United States Circuit
Judge; Honorable Campbell E. Beaumont, and Honorable
Leon R. Yankwich, United States District Judges.

Re: No. 78—Brown vs. Parker.

GENTLEMEN:

We have received today a memorandum in the above entitled case from the court relative to the proposed Findings of Fact and Conclusions of Law. Using the plaintiff's proposed Findings as a basis, the court has indicated certain changes therein.

It is our belief that the Findings and Conclusions as thus modified still fall short of correctly and fully setting forth the material facts. We submit for your consideration the following proposed additional changes:

1. Finding I, page 3, lines 12-19 reads as follows:

"That the plaintiff on September 7, 1940, had orders for the delivery of sun-dried raisins produced in said zone in [fol. 175] the year 1940 which he could not fill without complying with the seasonal program for raisins hereinafter referred to, and that defendants in enforcing said program

have directly interfered with and obstructed plaintiff's said business and thereby damaged the plaintiff in a sum in excess of \$3,000.00 exclusive of interest and costs,
* * *

Finding IX, as changed, page 9, lines 12-17 reads as follows:

"That plaintiff on September 7, 1941, (obviously should be 1940) had substantial orders for out of state delivery of raisins which he could not fill by purchase of 'free tonnage' and could not fill at all because of said pools without complying with said program; that defendants in enforcing said program have directly interfered with and obstructed plaintiff's said business. * * *

[fol. 176] The two provisions above quoted are obviously to a considerable extent repetitive and seemingly can serve only for the purpose of unduly emphasizing certain of the statements contained therein. In addition, the two provisions are confusing in that in Finding I, the statement is that plaintiff had orders for delivery which he could not fill without complying with the seasonal program; whereas, in Finding IX the statement is that he had orders for *out of state* delivery which he could not fill by purchase of "free tonnage" and could not fill at all because of said pools. In connection with this latter Finding, we also again call attention to the fact that all of the orders introduced by plaintiff called for delivery within the state and to the best of our belief there was no evidence whatsoever of any orders calling for out of state delivery.

Furthermore, we believe that the Finding that plaintiff had orders which he could not fill by purchase of "free tonnage" raisins is directly contrary to the evidence. Plaintiff testified that there were 20,000 tons sold by the producers of the 1940 crop in September, 1940, either prior to [fol. 177] or subsequent to September 7 (Rep. Tr. p. 51, lines 16-25.) The true answer appears to be from his testimony that he was unable to buy them because of the fact that he refused to pay the market price but offered less than that. (Rep. Tr. p. 53, lines 4-12; p. 56, lines 14-20.) We feel that the correct Finding on this would be as set out in our proposed Finding XVI as follows:

"That plaintiff on September 7, 1940, had substantial orders for delivery of raisins which he could not fill without

complying with said seasonal program and without paying therefor the prevailing market price."

Finding I also contains the statement on page 3, lines 18 and 19, as follows:

"And thereby damaged the plaintiff in a sum in excess of \$3,000.00, exclusive of interest and costs. . . ."

This is not in response to any issue in this case. There is a specific Finding of irreparable damage upon which to base the injunction and also a Finding that the matter in controversy exceeds the sum of \$3,000.00. The only [fol. 178] possible effect of the foregoing statement in these Findings would be to serve as a persuasive argument upon another court in an action for damages that this court had already established the fact that plaintiff had sustained damages in excess of \$3,000.00.

2. Finding III, as changed by the memorandum of the court in adding at the foot thereof the following:

"That said seasonal program is correctly set out in answer to the first amended complaint on file herein as Exhibit A thereof."

is incorrect and apparently the Finding fails to recognize the distinction between the basic proration program and the seasonal proration program. The basic proration program, as amended effective July 23, 1940, is the one set out as Exhibit "A" of the answer to the first amended complaint, and continues in effect until terminated or otherwise changed or modified. The seasonal proration program is for the season of 1940-1941, and is adopted in accordance with the provisions of the basic proration program and in this instance became effective September 7, 1940, and the essential features of such *seasonal* program are set forth in Finding IV.

[fol. 179] We believe that if the court will examine defendants' proposed Finding III, it will be found that this correctly and accurately sets forth the institution and the effective date and the differentiation between these two programs; and it will be further found that our Finding III follows the Stipulation of Facts as set forth in Paragraph 12 thereof on page 6, and we therefore feel that our

Finding III should be substituted for the proposed Finding III of the plaintiff as modified by the memorandum of the court.

3. In connection with Finding IV, we call the attention of the court to Paragraph 4 of our letter of September 8, 1941, relative to these Findings. Pages 6 and 7 of plaintiff's proposed Finding quoting from certain provisions of the basic program set forth as Exhibit "A" in the answer is surplusage and merely serves to burden the record, unless the purpose thereof be to restrict the injunction as against the enforcement of these specific provisions of the program.

4. Finding V contains the statement that 95% of the naturally dried raisins consumed in the United States are produced in said zone and that 95% of such raisins produced [fol. 180] in said zone are consumed outside the State of California. This Finding follows the language of Paragraph V of the first amended complaint, and these allegations are specifically denied by Paragraph V of the answer to such first amended complaint. As far as our search of the record shows, there is not one iota of evidence in support of this first statement that 95% of the naturally dried raisins consumed in the United States are produced in said zone. The record seems to be completely devoid of any evidence of any kind upon this allegation.

In regard to the statement that 95% of the raisins produced in said zone are consumed outside the State of California; the only evidence upon this appears to be the attempt to introduce a letter from the Giannini Foundation stating "that about 95% of the California raisins are shipped out of the State for consumption." The court at the time indicated that this matter was covered by the Stipulation of Facts and objection was made to the introduction of this letter. It was marked Exhibit 6. Upon our objection it was allowed for identification only and was never received in evidence. (Rep. Tr. p. 15, line 2 to p. 16, [fol. 181] line 9.)

As indicated by the court at the time, this was covered by the Stipulation of Facts, Paragraph 9, page 4, lines 18-22, reading as follows:

"Such raisins are ultimately consumed both within and without the State of California, but 90-95% of the raisins

consumed as raisins, and for human consumption are ultimately consumed outside of the State of California."

This was covered in defendants' proposed Finding XII, page 10, lines 24-27. We do not believe that there is any valid ground for deviating from the language of the Stipulation of Facts in making this Finding, and in this connection we would urge that our Finding XII be substituted in entirety for the plaintiff's proposed Finding V.

5. We again earnestly urge our objections to plaintiff's proposed Finding VII. Presumably one of the most material issues in this proceeding is the exact manner in which the raisins are handled from their incipency until they are ultimately consumed. Accordingly, we believe that defendants are entitled to a Finding full and accurate on this [fol. 182] matter. The Stipulation of Facts contains a detailed statement covering this in its entirety. Finding VII, however, entirely ignores the Stipulation of Facts and is not supported by any other evidence. We believe that the only evidence touching this subject outside of the Stipulation of Facts is that given by Mr. Chaddock, page 152, line 13 to page 153, line 4 of the Transcript. This, however, was confined entirely to Muscat layers which constitute less than 10% of the raisins produced. Finding VII, however takes this statement made regarding Muscat layers only and applies it to all raisins and eliminates the statement used in the Stipulation of Facts. We urge that defendants' proposed Finding X which follows the language of Paragraph 4, page 2 of the Stipulation of Facts, should be substituted for plaintiff's proposed Finding VII.

Finding VII contains the further statement that the grapes when thus dried in the vineyard are "a wholesome food and sound article of commerce." We maintain that this Finding is entirely contrary to the facts and that there is not the slightest bit of evidence to support the same. It may be that they are edible but all one has to do is to [fol. 183] look at defendants' Exhibits "B" and "C" showing the amount of dirt, chaff, sand, stems and waste removed from the raisins as they come from the vineyard before they are delivered to any purchaser for actual consumption, to become convinced beyond peradventure of a doubt that in the condition when taken from the vineyard they are anything but a "wholesome food." Of course, a load of the sand and dirt removed from the raisins might in

itself be a sound article of commerce. The fact remains that the raisins as taken from the vineyard are a raw product and never move in interstate commerce until they have been converted by processing or whatever term may be used into a finished product. Paragraph 7, page 3 of the Stipulation of Facts, states that: "When received by the packer in such condition, the raisins are not the subject of trade or commerce except in the transaction between the producer and packer as hereinabove described, and in occasional sales from one packer to another." The testimony of Mr. Hines is that the raisins as taken from the vineyard are never sold to the trade or to consumers and never shipped anywhere nor put into the movement of interstate commerce. (Transcript p. 129, line 20 to p. 130, line 17.) The same witness stated that such raisins "are not fit for commercial [fol. 184] use until they have been stemmed and cleaned." (Rep. Tr. p. 132, lines 13, 14.)

To find that the raisins in this condition are "a wholesome food" carries the connotation that it is a marketable article in that condition and ready to be sold and consumed in the ordinary course of trade and commerce. The following colloquy from the record is eloquent of the fact that this is directly contrary to the actual facts (Rep. Tr. p. 120, lines 2-18):

"Judge Stephens: Mr. Aynesworth, the witness has said the same function is performed. That is the important thing; rather than the machinery that does it. Do you contend that a raisin can properly be produced for the market with any of these functions left out?"

"Mr. Aynesworth: I will state this, and I believe this is correct: that they are marketing raisins all the time, that go into interstate commerce, without using anywhere near all the elements that the witness has testified to.

"Judge Stephens: It might all be done by hand, but the [fol. 185] function would still be there. In other words, they do have to be graded and washed—

"Mr. Aynesworth: And stemmed.

"Judge Stephens: And stemmed.

"Mr. Aynesworth: And packed.

"Judge Stephens: The sand has to be sifted away from them; they have to go through the fumigator, and so forth."

Instead of plaintiff's Finding VII which in itself and alone gives an entirely incorrect and erroneous impression,

we feel that defendants' proposed Findings X and XI should be substituted which follow the actual facts and the language of the Stipulation of Facts as agreed to by the parties.

6. What has been said relative to plaintiff's proposed Finding VII is applicable to his proposed Findings VIII and IX. Such Findings set out only a portion of the facts relative to the handling of the raisins. Defendants' proposed Findings X, XI, XII and XIII set this forth fully and with exactitude following the language of the Stipulation of Facts. As all of these steps may have an important bearing upon the determination of the question of whether [fol. 186] this is in violation of the interstate commerce clause of the Federal Constitution, we believe that such Findings as proposed by defendants are proper and should be adopted.

In addition, what we have said previously in commenting on plaintiff's proposed Finding I is applicable to his proposed Finding IX which contains substantially similar language. We again call attention to the fact that this Finding makes the statement that plaintiff had substantial orders for "out of state delivery of raisins" which we contend is directly contrary to the facts. Referring to the contracts in question, plaintiff's Exhibits 1, 3, 4, 8 and 9, it will be seen that they do not call for delivery out of the state, but within the state of California. The Stipulation covers the facts that from 90-95% of such raisins consumed as raisins for human consumption ultimately move out of the State of California. As a matter of fact, the plaintiff could not even testify that any of his raisins were to be shipped out of the state. In response to questions by Judge Stephens, he testified that he had no understanding with any of the parties to such contracts that they would ship the raisins out of the State [fol. 187] and that he did not particularly care whether they were shipped out or not. (Rep. Tr. p. 40, line 21 to p. 41, line 1.) It was stipulated that these raisins presumably took the same course as the average of all of the raisins and that under the Stipulation of Facts from 90-95% of the same consumed for human consumption would ultimately be shipped out of the State of California. Such, however, is a far-cry from a Finding that the plaintiff had direct orders for out of state delivery.

7. Plaintiff's proposed Findings XI and XII use the words "said program". To avoid any question of uncertainty and to bring it within the issues of the pleadings the word "seasonal" should be inserted in each Finding just before the word "program."

8. We request that defendants' proposed Finding VI be adopted inasmuch as it is a copy of Paragraph 15 of the Stipulation of Facts and we consider it essential for the purpose of showing the establishment of the grading provisions.

9. We request that defendants' proposed Finding XIV be adopted. This follows exactly the language of Paragraph 11 of the Stipulation of Facts beginning with line 18 thereof [fol. 188] on page 5. We consider that the same is material as showing that at all times there was on hand in the State of California in the hands of the packers an abundance of raisins from which all requirements of interstate commerce were and could be filled and that in fact there was an excess surplus carried at all times.

10. In plaintiff's proposed Conclusion III, we believe that the word "seasonal" should be inserted before the word "program" in line 22, page 10, for the same reasons as above stated in inserting the same word in Findings XI and XII.

As said Conclusion III is drawn it restrains the enforcement of the entire seasonal program. If this is the intent of the court, there is of course nothing to be said on our part, but it was our understanding that the court intended to restrict only certain provisions of the program and especially that it was not intended to restrain the enforcement of the grading provision.

We submit the foregoing to the court for its consideration in accordance with its letter of September 16, 1941, transmitting the memorandum in regard to the proposed Findings.

Respectfully submitted, Walter L. Bowers, Deputy
Attorney General.

WLB:GB.

[fol. 188-1] IN DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA NORTHERN
DIVISION

No. 78 Civil

PORTER L. BROWN, Plaintiff,

vs.

W. B. PARKER, Director of Agriculture, AGRICULTURAL PRORATE ADVISORY COMMISSION, RAISIN PRORATION ZONE #1, Program Committee, W. B. Parker, Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, Preston McKinney, H. C. Anderson, A. K. Kelly, Renald Mastrofini, Alex Berg, Mesrob Mirigian, Melchior Hansen, A. L. Davidson, W. J. Cecil, J. C. Harlan, One Doe, Two Doe, Three Doe, Four Doe, Five Doe, Six Doe, Seven Doe and Eight Doe, Defendants

OPINION

Before Albert Lee Stephens, Circuit Judge; Leon R. Yankwich and Campbell E. Beaumont, District Judges

STEPHENS, Circuit Judge:

The plaintiff, who is a packer of raisins in the State of California, instituted this action to restrain the enforcement of a prorate program for raisins prescribed under the [fol. 188-2] authority of the California Agricultural Prorate Act (Chap. 754, Cal. Stats. 1933) as amended, hereinafter called the Act. He has alleged and we hold that he has proved that the issues involve a sum in excess of \$3,000.00, in that the State of California is attempting to enforce the provisions of the Act and is claiming penalties in the amount of \$13,000.00 against the plaintiff.

It is plaintiff's position that the program formulated under the Act is unconstitutional in that it prevents his purchase in open market for shipment in interstate commerce and that it constitutes a direct interference with interstate commerce in contravention of the provisions of the Federal Constitution.

The defendant Proration Zone No. 1 filed a cross complaint praying that the Act and program thereunder be declared a valid exercise of the police power of the State

of California, that the plaintiff be enjoined from refusing to comply therewith, and for an accounting and damages for his failure to comply in the past:

The case was tried before United States Circuit Judge Albert Lee Stephens and United States District Judges Leon R. Yankwich and Campbell E. Beaumont, sitting as a "three judge court" under the authority of 28 U. S. C. A. Sec. 380, and was submitted upon the question of the constitutionality of the program set up under the Act.¹

[fol. 188-3] The raisin industry is an important one in California. It is uncontroverted that 95% of the naturally dried raisins consumed in the United States are produced in said Zone No. 1,² and 95% of such raisins produced in said zone are consumed outside the State of California. The stipulation of facts filed by the parties shows the following with reference to the customary manner in which the producers of raisin grapes in California, including Zone No. 1, operate:

"The producer of grapes is generally either the owner or the lessee of the land upon which the grapevines are located. * * * The producer picks the bunches of grapes to be utilized for raisins and spreads them on trays laid between the rows of vines, turns the trays from time to time, and finally dumps the dried contents into sweat boxes or picking boxes. The producer grades the same for quality and to eliminate substandard and inferior raisins and sometimes leaves this to be done for him by the packer before the latter takes delivery. When the producer is ready to deliver his raisins, he hauls the same, or employs independent truckers to haul the same, in sweat boxes or picking boxes to the packing plant, or in some cases the packer calls and takes delivery of the same in the vineyard. * * * All raisins sold by producers are sold to such

¹ We have carefully considered the very recent case of Railroad Commission of Texas et al. v. The Pullman Co., et al., 61 S. Ct. 643, 85 L. Ed. (March 3, 1941) and have concluded that the principles therein treated do not apply to the issues of the instant case.

² Zone No. 1 was established pursuant to proceedings initiated under the Act, and includes an area composed of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings and Kern Counties in the State of California.

packers in the State of California. Sale is completed when delivery is made and practically all sales are cash transactions, the producer receiving full payment for all raisins delivered immediately or within a ten day period.

"When the raisins are delivered by producers to such packers, they are cured but have not been subjected to any cleaning or other treatment. When delivered in such sweat boxes or picking boxes to the packer, the raisins are in clusters attached to the dried stems upon which they matured, except such as have fallen from said stems and have generally still attached a portion of the stem. * * *

"The raisins received from the producers are stored by the packers in containers upon the premises of the latter and are held by him (sic) in such containers for periods varying from a few days up to two years. * * * The packer at any time or at various times during this period removes the raisins from such containers and prepares the same for commercial sale and distribution to the public by cleaning, stemming, cap-stemming, seeding (muscats only), grading, sorting and packaging in various sized containers. * * *

"When such raisins are so prepared for commercial sale and delivery, the packer delivers the same to jobbers, wholesalers, brokers, distributors, and dealers for resale and distribution to the public.

"From the time of the delivery of raisins by the producer to the packer, as set forth herein, the preparation, care, handling, selling and distributing of such raisins is carried [fol. 188-5] on by such packer and all subsequent purchasers and handlers independently of the producer and entirely free from any control or direction of such producer. * * * No producer has any knowledge of the subsequent movement or ultimate use or consumption of the particular raisins delivered by him and has no right, title or interest in any of such raisins after the sale and delivery by him to the packer. This procedure is carried on by the packer independently of the producer of the raisins who has no knowledge nor means of knowledge as to the ultimate disposition of his particular raisins or as to whether the same ultimately move in intrastate or interstate commerce, except that at times certain producer-packers ship some of their own production directly into interstate commerce."

It will thus be seen that without any prorate provisions in the law, the plaintiff as a packer-dealer would be free to buy and would ordinarily buy the raisins which he boxes and sells in interstate commerce direct from the producer thereof and in amounts limited only by his desire or ability.

Under the Act after a prorate program has been formulated and approved by the commission,³ the agent appointed to administer the program shall issue to the producers certificates as provided in the Act. These certificates are divided into primary and secondary certificates. Each producer shall be entitled to one primary certificate which identifies him as a "producer" under the terms of the Act. [fol. 188-6] The Act, Sec. 20, as amended, Statutes 1939, p. 1948, provides that "secondary certificates shall be numbered consecutively and shall be used to control the time and volume of harvesting or other preparation for disposal. Such secondary certificates shall accompany all deliveries of the prorated commodity by producers into a primary trade channel",⁴ and it shall be unlawful for any prorated commodity to be delivered into a primary trade channel without the necessary secondary certificate therefor. It is also unlawful for any handler to receive or have in his possession without proper authority any such commodity. The Act contains a further provision that, "in the case of commodities which are normally concentrated for preparation for market, the program committee may authorize harvesting of the entire crop for the purpose of delivery to a concentration point and subsequent marketing control."

The program formulated under the Act provides that 20% of all "standard"⁵ raisins shall be delivered into

³ The Act creates an Agricultural Prorate Advisory Commission, and sets up procedure for the formulation of an Agricultural prorate marketing program.

⁴ "Primary channel of trade" is defined by the Act to mean "that transaction in which the producer or his co-operative marketing association loses physical possession of the commodity through the sale thereof or other disposition commercially." St. 1935, p. 1527, Sec. 2(j).

⁵ "Standard raisins" is defined by the Program to mean "raisins of a quality or grade which is equal to, or better than, the quality or grade for standard raisins as determined by the Committee * * *".

[fol. 188-7] a surplus pool,⁶ the producers to be given an advance of \$27.50 per ton for Muscat and Thompson Seedless raisins, and \$25.00 per ton for Sultanas, the advance to be obtained from the proceeds of a non-recourse loan from the Commodity Credit Corporation, a federal agency.

Fifty percent of all standard raisins are to be delivered into a stabilization pool, the producers to receive an advance from the Commodity Credit Corporation funds of \$55.00 per ton for Muscat and Thompson Seedless raisins, and \$50.00 per ton for Sultanas.

The balance of 30% of standard raisins may be disposed of by the producer without restriction as "free tonnage" provided he has obtained a secondary certificate, which certificate is issued to him when he has satisfied the pool requirements and upon payment of a certificate fee of \$2.50 per ton of such free tonnage.

It is provided that no substandard or inferior⁷ grade of [fol. 188-8] raisins may be offered as free tonnage or delivered into surplus or stabilization pools, but such raisins are delivered into separate pools for disposal by the program committee at the best prices obtainable and under the fairest conditions obtainable for by-product purposes. The net proceeds are distributed ratably to the producers contributing to such pools.

Raisins in the surplus pool may be sold by the committee "as soon as practicable after delivery of the same to the committee * * * provided, however, that none of the standard raisins in such pool shall be sold or otherwise disposed of prior to January 1 of the marketing season in

⁶ The program provides for a determination annually of the marketing policy for the marketing season and for the salable, stabilization and surplus percentages to be applied. The stipulation of facts filed herein states the percentages given herein to be the essential features of the 1940 seasonal marketing program for raisins.

⁷ "Sub-standard raisins" is defined by the Program to mean "raisins of a quality or grade below the quality or grade established by the Committee for standard raisins * * *," but which are not inferior raisins. "Inferior raisins" is defined to mean "raisins which are unfit for human consumption, as defined in the Pure Food and Drug Act of the United States of America, 21 U. S. C. A., sec. 1, et seq., as now in force or as hereafter amended."

which such pool is established". The Committee determines the prices at which the raisins shall be sold, but it is provided in the program that sales of surplus pool raisins shall be only for assured by-product and other diversion purposes, and that they shall not be sold into normal marketing channels.* There is a provision for transfer of raisins from the surplus pool into the stabilization pool in the event the original estimates were not in accord with later found facts and it later appears that an excessive quantity of raisins has been placed in the surplus pool.

As to the raisins in the stabilization pool, the program provides that they shall be sold by the committee "as soon as practicable after delivery of same to the committee, * * * [fol. 188-9] in such manner as to maintain stability in the markets and to dispose of such raisins". No sales of raisins from the stabilization pool shall be made at less than the prevailing market price for raisins of the same variety and grade on the date of sale. Stabilization pool raisins shall be sold only into normal marketing channels. There is a provision for transfer of raisins from the stabilization pool into the surplus pool in the event of an error in the original estimates of carry-over, etc. In the disposal of stabilization pool raisins "effort shall be made by the committee to effectuate sales in such fashion that the quantity of such stabilization pool raisins sold from time to time shall be coordinated as closely as possible with market demands therefor." (quotation from Program.)

The producers of the raisins have a limited equitable interest in the raisins in the surplus and stabilization pools, calculated upon a pro rata basis in accordance with the tonnage of each such producer, with adequate and proper differentials for variety and grade, and less deductions for advances made by the committee to such producer.

It will be seen that with the Act and program thereunder in operation, the plaintiff as packer who contracts for delivery of a very large percentage of the raisins he handles directly into interstate commerce, cannot freely purchase raisins directly from the producer, for, except as to the [fol. 188-10] "free tonnage" raisins, he must make his purchase from the Zone representatives under restrictions

* "Normal marketing channels" is defined to mean "those merchandising channels through which handlers customarily dispose of raisins for human consumption as raisins."

herein mentioned, and as to the 30% free tonnage he must make his purchases only when the raisins are accompanied by the secondary certificate showing full compliance with the program.

There is in evidence a copy of the "Stabilization Pool Sales Policy" set up by the Zone Agent, which recites that the Program Committee reserves the right to determine the eligibility of packers to purchase stabilization pool raisins, and that in order to be eligible to purchase raisins from the committee a packer must be completely current in respect to payment of secondary proration certificate fees. Another item taken into consideration in the determination of eligibility to purchase raisins is whether or not there has been complete proration of all raisins in the packer's possession or on his premises.

It comes to this, that the plaintiff cannot, without violating the provisions of the program, purchase any raisins for his interstate or intrastate business from a grower who does not have the certificate showing his full compliance with the program, and the evidence is clear that plaintiff took orders for out-of-state delivery which he could not fill by purchase of so-called "free tonnage" raisins and could not fill at all because of the program pool without complying with the program. Nor can he under the regulations prescribed by the Program Committee purchase any raisins deposited in the stabilization pool if he [vol. 188-11] has on his premises or in his possession any raisins that are not accompanied by the certificate showing proration by the grower thereof.

Plaintiff in support of his position that the program formulated under the Act is unconstitutional as a direct interference with his shipping raisins in interstate commerce, cites the case of *Mutual Orange Distributors v. Agricultural Prorate Commission of the State of California*, D. C., 35 Fed. Supp. 108, recently decided by a three judge court sitting in this District but with different District Judges sitting with the Circuit Judge, and defendants seek to distinguish the case on the facts. Notwithstanding its title this cited case has nothing to do with oranges, but is concerned solely with the prorate program for the marketing of lemons. This case will be referred to as the "lemon prorate case". We are of the opinion that notwithstanding factual differences in the two cases, each of them brings very similar principles to bear upon the issues.

Defendants' point of alleged distinction seems to be that in the lemon prorate case the prohibition was on the producers of lemons selling their product in interstate commerce without the secondary certificates provided for in the Act. The lemon proration program prorated among all growers in the State the lemons which could be marketed in primary trade channels. The custom of lemon growers was to sell direct to the trade out of the state. In the [fol. 188-12] instant case the custom of the trade is for the producer of raisin grapes to sell the cured raisins to packers within the state, and the packers in turn sell to jobbers and wholesalers for distribution to the consuming public. The prohibition is on the grower from selling, and the packer from buying raisins on which a secondary certificate has not been issued. The argument is that this is an intrastate transaction, and therefore the program attaches before the raisins have entered interstate commerce, and that it cannot be said that the program constitutes a direct interference with interstate commerce.

Championing the constitutionality of the program the defendants invoke the principle that a State may legally use its police power in the interest of the welfare of its people, even to the extent of affecting interstate commerce. This principle, with its limitations, was discussed by the Supreme Court in *Simpson v. Shepard*, 230 U. S. 352, 399, in the following language:

"The power of Congress to regulate commerce among the several states is supreme and plenary. . . . The conviction of its necessity sprang from the disastrous experiences under the Confederation, when the states vied in discriminatory measures against each other. In order to end these evils, the grant in the Constitution conferred upon Congress an authority at all times adequate to secure the freedom of interstate commercial intercourse from state control, and to provide effective regulation of that intercourse as the national interest may demand. . . .

"The grant in the Constitution of its own force, that is, without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. . . .

[fol. 188-13] "Thus the states * * * have no power to prohibit interstate trade in legitimate articles of commerce (citing cases). * * *"

In *Lemke v. Farmers Grain Co. of Embden*, 258 U. S. 50, 42 S. Ct. 244, 66 L. ed. 458, the Supreme Court had under consideration the constitutionality of a state statute which required purchasers of grain to obtain a license and pay a license fee, and to act under a defined system of grading, inspection and weighing. The defendants in that case, as in the instant case, relied upon the principle that a state may make local laws under its police power which may stand until Congress takes possession of the field under its superior authority to regulate commerce among the States. The Supreme Court rejected the defendants' argument, stating (258 U. S. page 59, 42 S. Ct. page 247, 66 L. ed. 458),

"This principle has no application where the State passes beyond the exercise of its legitimate authority and undertakes to regulate interstate commerce by imposing burdens upon it."

The Court reaffirmed its decision in *Simpson v. Shepard*, supra, and applying the principles laid down in that case, held that the statute under consideration was unconstitutional in that it denied the privilege of engaging in interstate commerce *except to dealers by state authority*. And in *United Leather Workers International Union v. Herkert Meisel Trunk Co.* 265 U. S. 457, (p. 467) 44 S. Ct. 623, 68 L. ed. 1104, 33 A. L. R. 566, the Supreme Court said the statute under consideration in the *Lemke* case was a direct limitation on interstate commerce.

In *Grandin Farmers' Co-op Elevator Co. v. Langer*, Dist. Co. No. Dak. SW Div., 1934, 5 Fed. Supp. 425, affirmed without opinion, 292 U. S. 605, 54 S. Ct. 772, 78 L. ed. 1467, the state statute under consideration declared an embargo on its wheat when prices became so low as to become confiscatory. The Court said (5) F. Supp. page 427),

[fol. 188-14] "The state has no power to interfere directly with interstate commerce, regardless of economic conditions. The regulation of such commerce is a matter of national concern. * * * If one state or all the states could place embargoes upon the export of the products of their mines, forests, fields, and oil wells, an inconceivable con-

dition of national insecurity would follow. * * *

"A state statute, which, by its necessary operation, directly interferes with or burdens interstate commerce is a prohibitive regulation and invalid, regardless of the purpose for which it was enacted. (citing cases.)"

We think the case of Champlin Refining Co. v. Corporation Commission of Okla., 286 U. S. 210, 52 S. Ct. 559, 76 L. ed. 1062, 86 A. L. R. 403, although sometimes asserted as such, is not authority for the contention that practically unlimited proration of a state's product is within the power of the state. In that case the Supreme Court had under consideration a state statute which curtailed *production* of oil to *prevent waste*. It was there held that production of oil is a mining operation and not a part of interstate commerce even though the product obtained is intended to be and in fact is immediately shipped in such commerce.

In considering the Champlin Refining Co. case, *supra*, the case of West v. Kansas Natural Gas Co., 221 U. S. 229, 31 S. Ct. 564, 55 L. ed. 716, 35 L.R.A., N.S., 1193, should also be taken into consideration. In the West case the state act prohibited foreign corporations from laying pipe lines across highways and transporting natural gas therein [fol. 188-15] to points outside the state. It further provided that domestic corporations must transmit gas only between points in the state, and shall not transport or deliver gas to corporations or persons engaged in transporting or furnishing gas to points outside the state. In holding this statute unconstitutional, the Court distinguished between the police power of the State to regulate the *taking* of a natural product, such as natural gas, from its natural placement, and prohibiting that product from transportation in interstate commerce after removal from its natural placement, saying that the former is within, and the latter beyond, the power of the State. It is stated that gas, *when reduced to possession*, is a commodity and belongs to the owner of the land. It is his individual property subject to sale by him, and may be a subject of intrastate commerce and interstate commerce. A state statute which attempts to prohibit its being a subject of interstate commerce is unconstitutional.

In the light of the broad grant of power given Congress over interstate commerce and the principles laid down by the Supreme Court as herein outlined, the necessary effect

upon interstate commerce of the raisin prorate program [fol. 188-16] must be scrutinized, and this with the principle in mind that one challenging the validity of a state enactment is not necessarily bound by the legislative declarations of purpose. It is open to him to show that the practical operation of the statute or of any program devised under the authority of such statute directly burdens or effectively prevents the free flow of interstate commerce. *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1, 49 S. Ct. 1, 73 L. ed. 147.

It may here be stated that the inhibition of the program is not based upon crop limitations or upon the health of the consumer or protection of the industry through exclusion from the market of unfit fruit. Such cases as *Sligh v. Kirkwood*, 237 U. S. 52, 32 S. Ct. 501, 59 L. ed. 835, are not in point. And it is not based upon false labeling or deceptive packaging. Neither is it a statute regulating proper conditioning of the commodity prior to its being offered to the consumer. Nor is it a limitation upon submitting ripe grapes to a proper process whereby the grape becomes a marketable raisin. The stipulation itself speaks of the sun dried grape as a "raisin" before it is removed from the vineyard and before it is stemmed, cleaned, or packaged.

No facts, claims or argument in this case have been related to the part of the program designated "Green Diversion". There have been no steps taken to change the production of raisins in quantity either above or below the growers' own judgment or desire. We are constrained [fol. 188-17] to hold and do hold that the production of raisins is complete when the grapes dry and cure into raisins. This natural process of drying and curing takes place on the premises where the grapes are grown, and is accomplished without the intervention of anyone either in co-operation or otherwise with the producer (farmer, grower). When the grapes are so dried and cured they are substantially ready for market as raisins. The process of stemming, cleaning, etc. which is not uniform in packing plants, tends to make the raisins more desirable commercially and thus create a greater demand for them in the market, but is not essential to production. It is our opinion that the prorate program as presented in this case does not attach to or impinge upon "production".

Townsend v. Yeomans, 301 U. S. 441, 57 S. Ct. 842, 81 L. ed. 1210 is cited as authority for the constitutionality of

the Act and program thereunder. There a State statute fixing reasonable maximum charges for the services of warehousemen handling tobacco was held constitutional.

The following quotations from the *Yeomans* case indicate how widely different the state regulation there concerned is from the one before us:

"* * * we find no ground for concluding that the state requirements lay any *actual* burden upon interstate or foreign commerce. The Georgia Act does not attempt to fix the prices at the auction sales or to regulate the activities of the purchasers. The fixing of reasonable maximum charges for the services of the warehousemen in aid of the tobacco growers does not militate against any interest of those who buy." 301 U. S. page 455, 57 S. Ct. page 849, 81 L. ed. 1210. (Italics the Court's.)

[fol. 188-18] "(quoting from *Cargill Co. v. Minnesota*, 180 U. S. 452, 470, 21 S. Ct. 423, 45 L. ed. 619) 'The statute puts no obstacle in the way of the purchase by the defendant company of grain in the State or the shipment out of the State of such grain as it is purchased.'"

301 U. S. page 457, 57 S. Ct. page 850, 81 L. ed. 1210.

"Here, the Georgia Act lays no constraint upon purchases in interstate commerce, does not attempt to fix the prices or conditions of purchases, or the profit of the purchasers. It simply seeks to protect the tobacco growers from unreasonable charges of the warehousemen for their services to the growers."

301 U. S. page 459, 57 S. Ct. page 850, 81 L. ed. 1210.

While it is true that the program purports merely to prevent and regulate the sale of raisins to the packer under the universal custom of his cleaning, stemming and packaging them within the State, the raisins on the producing premises and those stored by the program committee are at all times kept from market except through the operation of the program. It is impossible to avoid the conclusion that the purpose and necessary effect of the program is to place a controlled embargo on the State's raisin production, in order to effect and stabilize prices. It seems clear to us that the program is frankly and simply a means of controlling the supply of raisins into interstate trade channels

to meet the market demands. As to this purpose it is not in our province to comment. We think the State has attempted to accomplish this result by a process which impinges upon a grant of power to the Federal government. The following quotation from the Program is illustrative:

"Secondary Certificate shall be issued to control the time and volume of movement of salable raisins into the primary channels of trade." (Article XI, Sec. 1 (b))

The Program gives the Committee the power to sell the pooled raisins "in such manner as to maintain stability [fol. 188-19] in the markets", and provides that no sales "shall be made at less than the prevailing market price for raisins of the same variety and grade on the date of sale", and "effort shall be made by the committee to effectuate sales in such fashion that the quantity of such stabilization pool raisins sold from time to time shall be coordinated as closely as possible with market demands therefor".

The "Stabilization Pool Sales Policy" set up by the Committee provides for opening prices ranging from \$55.00 per ton for Sultanias to \$60.00 per ton for Thompson Seedless Raisins. It is stated "Notwithstanding anything herein to the contrary, the above opening prices will not be reduced by the sales policy committee of the Surplus Marketing Administration within sixty (60) days from the effective date hereof (Jan. 1, 1941)."

In a printed communication sent out by the Proration Program Committee to the raisin producers within the zone, it is stated that the program " . . . was based upon the idea . . . that a large part of the 1940 crop should be placed in pools under Committee supervision to prevent a flooding of the few available markets, with the inevitable price decline which goes with flooded markets."

By every authority of our acquaintance the enforcement of the implementing program under the Act constitutes a direct and illegal interference with interstate commerce. [fol. 188-20] It is no answer in principle to say that under the terms of the program 30% (free tonnage) of produced raisins are available for the open market. This percentage is fixed by the program as best calculated to serve its purposes, it might be 15% of the crop or none at all. The vice of the situation is, that the program requires the submission

of any properly marketable part of the crop to its terms, all of which are directed to the control of the commodity into commerce. It is the judgment of the program administrators that such purpose will be advanced with the freeing of 30% of the crop at the beginning of the 1940-1941 season's market. After the release of the 30% free tonnage the amount of raisins which may be released for absorption by the market equated from the pool is also wholly within the judgment of the prorated authorities.

We are reminded of Mr. Justice McKenna's illustration in the case of *Heisler v. Thomas Colliery Company*, 260 U. S. 245, 43 S. Ct. 83, 84, 67 L. ed. 237, wherein he sustains the State's right to a tax on coal "washed or screened, or otherwise prepared for market" and remarks that if the subject matter is under Congressional jurisdiction because the coal will enter interstate commerce "The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West, etcetera." But, on the other hand, if the State of California has the power to execute a control plan of its entire fruit crop and permit it to enter the market for consumption only as and when [fol. 188-21] its administrators adjudge proper, then every state can so control all industries and crops within its boundaries by the same token. This presents a condition certainly no less repugnant to our dual system of State and Federal government than that illustrated by Mr. Justice McKenna, a condition in the situation confronting us which the constitutional fathers sought to guard against by writing the commerce clause into the Constitution itself. (see hereinbefore quoted portion of the opinion in the case of *Grandin Farmers' Co-op Elevator Co. v. Langer*, supra.) In our opinion the State has ventured upon a sphere of governmental activity which impinges upon a constitutional provision which the framers of the Constitution recognized as necessary to the national status of the several states in their Union.

It is our duty to declare the law as we see it. We cannot however fail to appreciate the economic effect of our decision in this case. It may not be out of place therefore to mention here the highly fortunate circumstance that there is federal law and administrative machinery available by

which a proper and legal proration of the raisin crops may be accomplished if such is generally held to be desirable.

The petition for a decree permanently enjoining the defendants from enforcement of the raisin prorate program hereinbefore referred to is granted. The relief sought by defendants in their cross complaint is denied. Plaintiffs may draw findings of fact and conclusions of law in conformity with the expressions of this opinion.

[fol. 188-22] In view of the fact that the case was submitted solely on the question of the constitutionality of the program, we do not consider the defenses of estoppel and the statute of limitations raised by the defendants in their pleadings.

[fol. 188-23]

DISSENTING OPINION

“Yankwich, District Judge (dissenting).

“The control of the Congress over interstate commerce, United States Constitution, Art. I, Sec. 8, Cl. 3, being absolute, any direct interference with it by any State must give way. But this Congressional primacy does not stand in the way of regulations by the States, through the exercise of their taxing or police powers, which, although local in their nature, affect interstate commerce. See *The Minnesota Rate Cases*, 1913, 230 U. S. 352, 399, 33 S. Ct. 729, 57 L. Ed. 1511, 48 L. R. A., N. S., 1151, Ann. Cas., 1916A, 18; *Milk Control Board v. Eisenberg Farm Products*, 1939, 306 U. S. 346, 351, 59 S. Ct. 528, 83 L. Ed. 752; *United States v. Rock Royal Co-Op.*, 1939, 307 U. S. 533, 569, 59 S. Ct. 993, 83 L. Ed. 1446; *Mulford v. Smith*, 1939, 307 U. S. 38, 48, 59 S. Ct. 648, 83 L. Ed. 1092.

“In a recent case (*California v. Thompson*, 1941, 61 S. Ct. 930, 932, 85 L. Ed. —), Mr. Justice Stone has stated the extent of compatibility of state regulation with national supremacy in the field of interstate commerce in these words:

“‘As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of local concern with respect to which Congress has not exercised its power, even though the regulation affects interstate commerce. Ever since *Wilson v. Blackbird Creek Marsh Co.*, 2 Pet. 245, 7 L. Ed. 412, and *Cooley v. Board of Port Wardens*,

12 How. 299, 13 L. Ed. 996, it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce [fol. 188-24] but which because of their local character and their number and diversity may never be adequately dealt with by Congress. Because of their local character, also, there is wide scope for local regulation without impairing the uniformity of control of the national commerce in matters of national concern and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause. Notwithstanding the Commerce Clause, such regulation in the absence of Congressional action has, for the most part, been left to the states by the decisions of this Court, subject only to other decisions of this Court, subject only to other applicable constitutional restraints. See cases collected in *Di Santo v. Pennsylvania*, supra, 273 U. S. (34) 40, 47 S. Ct. 267, 71 L. Ed. 524'.

"When we consider Congressional regulation of interstate commerce, we must, as students of late juristic trends, concede that recent decisions, such as those sustaining the National Labor Relations Act, 29 U. S. C. A. Sec. 151 et seq. (*National Labor Relations Board v. Jones-Laughlin Corp.*, 1937, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A. L. R. 1352) and the Fair Labor Standards Act, 29 U. S. C. A. Sec. 201 et seq. (*United States v. Darby*, 1941, 312 U. S. 100, 61 S. Ct. 451, 85 L. Ed. —, 132 A. L. R. 1430), extend the power of the Congress to dominate purely local conditions; through the exercise of its absolute control over interstate commerce."

[fol. 188-25] But this *does not mean* that because a product is destined for interstate commerce, or a business aims at interstate commerce, it is, *by this very fact*, without the ambit of state regulation. Carriers or persons engaged in transportation in interstate commerce may be subjected to many state regulations. See their enumeration

* These decisions overrule all the cases, such as *Hammer v. Dagenhart*, 1918, 247 U. S. 251, 38 S. Ct. 529, 62 L. Ed. 1107, 3 A. L. R. 649, Ann. Cas. 1918E, 724, and *Carter v. Carter Coal Co.*, 1936, 298 U. S. 238, 56 S. Ct. 855, 80 L. Ed. 1160, which, if followed, would have made it impossible for the Congress to influence, by indirect regulation, industrial relations within state confines.

by Mr. Justice Stone in *California v. Thompson*, 1941, 61 S. Ct. 930, 85 L. Ed., —. So, also, may the taxing power of a state be used to tax products originating in, or intended for, interstate commerce, either before leaving the state or after reaching it. See *Henneford v. Silas Mason Co.*, 1937, 300 U. S. 577, 57 S. Ct. 524, 81 L. Ed. 814; *Ford Motor Company v. Beauchamp*, 1939, 308 U. S. 331, 60 S. Ct. 273, 84 L. Ed. 304; *Felt & Tarrant Manufacturing Co. v. Gallagher*, 1939, 306 U. S. 62, 59 S. Ct. 376, 83 L. Ed. 488; *Pacific Tel. & Tel. Co. v. Gallagher*, 1939, 306 U. S. 182, 59 S. Ct. 396, 83 L. Ed. 595; *McGoldrick v. Berwind-White Co.*, 1940, 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A. L. R. 876.

While the rigid distinction between production and commerce no longer holds in so far as the exercise of congressional restraint and regulation is concerned (See *United States v. Darby*, 1941, 312 U. S. 100, 61 S. Ct. 451, 85 L. Ed. —, 132 A. L. R. 1430), it is still maintained when we come to assay the exercise of state powers. In a leading case on the subject (*Heisler v. Thomas Colliery Co.*, 1922, 260 U. S. 245, 43 S. Ct. 83, 86, 67 L. Ed. 237), Mr. Justice McKenna stated the principle in these words:

"We may, therefore, disregard the adventitious considerations referred to and their confusion, and by doing so we can estimate the contention made. It is that the [fol. 188-26] products of a state that have, or are destined to have, a market in other states *are subjects of interstate commerce*, though they have not moved from the place of their production or preparation.

"The reach and consequences of the contention *repels its acceptance*. If the possibility, or indeed certainty, of exportation of a product or article from a state determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. *It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides*

and flesh of cattle yet "on the hoof", wool yet unshorn, and coal yet unmined because they are in varying percentages destined for and surely to be exported to states other than those of their production.' *Heisler v. Thomas Colliery Co.*, 1922, 260 U. S. 245, 259, 43 S. Ct. 83, 67 L. Ed. 237. (Italics added.)

And see *Veazie v. Moor*, 1852, 14 How. 568, 573, 574, 14 L. Ed. 545; *Kidd v. Pearson*, 1888, 128 U. S. 1, 20, 21, 9 S. Ct. 6, 32 L. Ed. 346; *Oliver Iron Co. v. Lord*, 1923, 262 U. S. 172, 178, 179, 43 S. Ct. 526, 67 L. Ed. 929.

[fol. 188-27] The act there before the Court subjected every ton of anthracite coal mined 'washed, screened, or otherwise prepared for market' in the state to a one and one-half percent tax of its value when prepared for market, to be assessed after it is prepared as indicated and 'is ready for shipment or market.' Penn. Laws, 1921, page 479, 73 P. S. Pa. Sec. 2501.

Here was a product, anthracite coal, on which many states depended at the time, for fuel, found only in a small number of counties in the State of Pennsylvania, and, from its very nature, destined for interstate commerce the moment it left the mine. Here was a tax, the effect of which made the cost of production greater and sale in interstate commerce more burdensome. Yet the Court could see in it no assault upon federal supremacy in the realm of interstate commerce.¹⁰

I can see no escape from this conclusion.

Unless we are ready to say that the recent decisions extending congressional power to regulate local conditions,

¹⁰ This case was decided *after* *Lemke v. Farmers' Grain Co.*, 1922, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458, upon which my associates' finding of unconstitutionality of the raisin program is chiefly bottomed. And the opinion was written *by the same justice*, Mr. Justice McKenna. The principles it declares have never been questioned. Some of the later cases in which it is cited or followed are: *Oliver Iron Co. v. Lord*, 1923, 262 U. S. 172, 179, 43 S. Ct. 526, 67 L. Ed. 929; *United Leather Workers' International Union v. Herkert & Meisel Trunk Co.*, 1924, 265 U. S. 457, 465, 44 S. Ct. 623, 68 L. Ed. 1104, 33 A. L. R. 566; *Hope Gas Co. v. Hall*, 1927, 274 U. S. 284, 288, 47 S. Ct. 639, 71 L. Ed. 1049; *McGoldrick v. Berwind-White Co.*, 1940, 309 U. S. 33, 47, 60 S. Ct. 388, 84 L. Ed. 565, 128 A. L. R. 876.

through the exercise of control over interstate commerce, have destroyed the power of the States to deal with products of agriculture or manufacture which are destined for interstate commerce before they actually enter the flow of that commerce. Even the most extreme of the newer federalists would not go so far. See Walton H. Hamilton and Douglass Adair, 1937, *The Power to Govern*; Edward Corwin, 1926, *The Commerce Power versus State Rights*; Edward Corwin, 1941, *Constitutional Revolution Limited*: [fol. 188-28] The thoughts just expressed find support in *Champlin Refining Co. v. Commission*, 1932, 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, 86 A. L. R. 403, which involved the Oklahoma oil prorate law. It is true that oil, being a natural resource, allows, constitutionally, broader regulation both federal and state, than other products of industry or agriculture. And the Court said so. However, the Court, while giving its sanction to the State's regulation upon that score, also dealt specifically with its relation to the interstate commerce clause. And, in finding no conflict with it, the Court did not place its decision upon *the character of oil as a natural resource*. It determined the case upon the ground that the law was a regulation of production before oil entered the flow of interstate commerce. And it found it unobjectionable, although the oil was intended for interstate shipment. The Court said:

“Plaintiff contends that the act and proration orders operate to burden interstate commerce in crude oil and its products in violation of the commerce clause. * * *

It is clear that the regulations prescribed and authorized by the act and the proration established by the commission apply only to production and not to sales or transportation of crude oil or its products. Such production is essentially a mining operation, and therefore is not a part of interstate commerce, even though the product obtained is *intended to be and in fact is immediately shipped in such commerce*. *Oliver Iron Co. v. Lord*, 262 U. S. 172, 178, 43 S. Ct. 526, 67 L. Ed. 929; *Hope Gas Co. v. Hall*, 274 U. S. 284, 288, 47 S. Ct. 639, 71 L. Ed. 1049; *Foster Packing Co. v. Haydel*, 278 U. S. 1, 10, 49 S. Ct. 1, 73 L. Ed. 147; *Utah Power & Light Co. v. Pfof*, *supra* (286 U. S. 165, 52 S. Ct. 548, 76 L. Ed. 1038). No violation of the commerce clause is shown.’ *Champlin Refining Co. v. Commission*, 1932, 286

[fol. 188-29] U. S. 210, 235, 52 S. Ct. 559, 565, 76 L. Ed. 1062, 86 A.L.R. 403 (Italics added.)”¹¹

In effect, this means that the nature of a product does not determine its availability as an object of state legislative control outside of the inhibition of the commerce clause. Rather must the question be determined in the light of the facts in each case. A state embargo upon a product is forbidden. See *Lemke v. Farmers' Grain Co.*, 1922, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458; *Shafer v. Farmers' Grain Co.*, 1925, 268 U. S. 189, 45 S. Ct. 481, 69 L. Ed. 909; *Baldwin v. Seelig*, 1935, 294 U. S. 511, 55 S. Ct. 497, 79 L. Ed. 1032, 101 A.L.R. 55. But state enactments or programs which affect, *indirectly*, either through regulation or taxation, the quantity of a product available for use in interstate commerce before it enters it, do not,

“¹¹ The California Agricultural Prorate Act was enacted on June 5, 1933, St. 1933, p. 1969, after the decision in *Champlin Refining Co. v. Commission*, 1932, 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, 86 A.L.R. 403, which was filed on May 16, 1932. It was modeled after the Oklahoma Oil prorate statute which the Court had before it in that case. Its definition of ‘waste’ is almost identical with that in the Oklahoma Statute. It reads:

“The terms ‘agricultural waste’—in addition to their ordinary meaning—shall include economic waste, and waste incident to the harvesting and/or preparation for any delivery to market of agricultural commodities in excess of *reasonable market demands*.” (Calif. Stats. 1933, Ch. 754, Sec. 2, as amended by St. 1935, p. 1527(b)) (Italics added.)

“The definition of waste in the Oklahoma Statute, 52 Okl. St. Ann. Sec. 273 (as found in a footnote to page 223 of 286 U. S., 52 S. Ct. at page 560 of the opinion) reads:

“‘That the term ‘waste’ as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or *reasonable market demands*.” (Italics added.)

as I read the cases, impinge upon the commerce clause.¹² To hold otherwise is to bring about the conditions which Mr. Justice McKenna envisaged in *Heister v. Thomas Colliery Co.*, *supra*. It is to remove every product, the sale of which is ultimately an interstate act, from local control. For if every regulation which may affect the quantity of the product available for interstate shipment be violative of the commerce clause, state statutes regulating the quantity and conditions of production of an article of commerce or the wages or hours and conditions of labor of employees producing it, must go by the board. And the reason is obvious: For such legislation, from an economic standpoint [fol. 188-30], ultimately affects production. It increases the burden upon production and discourages those who consider the burden oppressive from engaging in such enterprise.

And this is true, whether we consider restrictions on working hours of men (California Labor Code, St. Cal. 1937, p. 205, et seq., Secs. 510-856) or of women and children (California Labor Code, Secs. 1171-1398, p. 213 et seq.) regulations of the manner of payment of wages (California Labor Code, Secs. 200-452, p. 201 et seq.), minimum sanitation requirements (California Labor Code, Secs. 2330-2425, p. 253 et seq.), or laws establishing employers' liability (California Labor Code, Secs. 3201-6002, p. 265 et seq.), or decreeing safety devices (California Labor Code, Secs. 6300-7601, p. 306 et seq.).

They all increase cost and, therefore, diminish the quantity of production. It is also axiomatic that free, unregulated, anarchic enterprises attract the intrepid and adventurous in the economic field more readily than strictly controlled ventures. Control thus diminishes production in existing establishments and discourages increase in the number of enterprises.

[fol. 188-31] It follows that if the fact that a product is destined for interstate commerce, automatically plates it without the scope of state control, then control of the type enumerated is immediately nullified.

¹² "A very recent illustration of judicial sanction for a state regulation of the handling of what might be called an inherently interstate commodity, tobacco, is found in *Townsend v. Yeomans*, 1937, 301 U. S. 441, 57 S. Ct. 842, 81 L. Ed. 1310."

To bring these thoughts to bear upon the problems before us.

Raisins as produced by the grower; through the drying and sweating process, from grapes grown on his land, are not an article of commerce. They are not ready for shipment or market. Nor are they fit for human consumption. Before they may be served as human food, the packers must process them through a complicated process. This alone makes them palatable and fit for use. The State of California has undertaken, through this legislation, and the program intended to carry it into effect, to impose certain regulations, to pool a portion of the crop and to restrict free sales as between the growers and the packers. This program, which derives its sanction from the assent of the growers, deals entirely with raisins before they enter the flow of interstate commerce. I grant that its effect is to restrict freedom of action in dealings between growers and packers within the state. If this result in making raisins unavailable to recusants like the plaintiff, except upon compliance with certain conditions, this is no more a direct burden on interstate commerce than was the tax on anthracite coal (*Heisler v. Thomas Colliery Co.*, supra), without the payment of which no anthracite coal was available for shipment in interstate commerce, or the curtailment of oil production through proration, (*Champlin Refining Co. v. Commission*, supra), which reduced directly the quantity of oil available for shipment in interstate commerce.

Hence my dissent from the conclusion reached by my colleagues.

[fol. 189] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

Findings of Fact and Conclusions of Law—Filed December 4, 1941

This case came on regularly for trial before a statutory three-judge court convened before the Honorable Campbell E. Beaumont, United States District Judge for the Southern District of California, by calling to his assistance the Honorable Albert Lee Stephens, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, and the

Honorable Leon R. Yankwich, United States District Judge for the Southern District of California, pursuant to Section 266 of the Judicial Code, as amended (28 U. S. C. A. [fol. 190] Section 380), sitting in its courtroom in the Federal Building, in the City of Fresno, in the State of California.

Plaintiff was represented by his attorneys and solicitors, Messrs. Aten & Aten, and G. L. Aynesworth, Esq., and the defendants by Earl Warren, Esquire, Attorney General of the State of California, and Messrs. Walter L. Bowers, W. R. Augustine and Gilbert F. Nelson, Deputies Attorney General, appearing for W. B. Parker, Director of Agriculture, Agricultural Prorate Advisory Commission, and W. B. Parker, Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, and Preston McKinney, members of said Commission, and J. C. Harian; and Strother P. Walton, Esq., appearing for Raisin Proration Zone No. 1, Program Committee, and H. C. Anderson, A. K. Kelly, Renald Mastrofina, Alex Berg, Mesrob Mirigian, Melchior Hansen, A. L. Davidson, and W. J. Cecil, members of said Committee.

On March 7th, 1941, plaintiff's application for an interlocutory injunction was heard before the above-mentioned three-judge court and said application was denied, and the cause was directed to be set for trial on its merits at as early a date as the court's calendar would permit.

Accordingly, the trial was commenced on April 11th, 1941, and concluded on April 12, 1941, and evidence, both oral and documentary, was introduced on behalf of the respective parties and at the conclusion thereof the cause was argued and submitted; that thereafter upon the Court's own motion the case was reopened for the purpose of taking more evidence, and on the 16th day of October, 1941, further evidence was offered and received and the cause then again submitted.

Wherefore, the court being fully advised in the premises [fol. 191] now makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

I

That the State of California, through its duly authorized officers, is attempting to enforce the provisions of a prora-

tion program for raisins (hereinafter sometimes called the program) prescribed under the authority of the California Agricultural Prorate Act (Chapter 754, California Statutes 1933), as amended (hereinafter sometimes called the Act), and is claiming penalties in the amount of \$13,000.00 against the plaintiff; that the plaintiff, since the commencement of the raisin crop season of the year 1939, has been and is now engaged in the business of producing, buying, packing and selling sun-dried raisins produced in said zone, including raisins produced in the crop year 1940; that the plaintiff on September 7, 1940, had orders for the delivery of sun-dried raisins produced in said zone in the year 1940 which he could not fill without complying with the seasonal program for raisins hereinafter referred to, and that defendants in enforcing said program have directly interfered with and obstructed plaintiff's said business and thereby damaged the plaintiff in a sum in excess of \$3,000.00, exclusive of interest and costs, and that the matter in controversy herein exceeds, exclusive of interest and costs, the sum of \$3,000.00.

II

That defendant Raisin Proration Zone No. 1, is and has been since August 3, 1937, a Proration Zone organized and existing pursuant to the provisions of the Agricultural Prorate Act of the State of California, (Chapter 754, Statutes of 1933) as amended, for the purpose of applying [fol. 192] the provisions of said Agricultural Prorate Act to an agricultural commodity, to wit, raisins, being unbleached, sun-dried, or partially sun-dried, grapes of the Thompson Seedless, Sultana, and Muscat varieties grown and produced in the said Zone, consisting of the Counties of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and Kern within the State of California.

That defendant, W. B. Parker is Director of Agriculture of the State of California; that defendants, W. B. Parker, Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, and Preston McKinney, are the members of the Agricultural Prorate Advisory Commission of the State of California; that defendants, H. C. Anderson, A. K. Kelly, Renald Mastrofina, Alex Berg, Mesrob Mirigian, Melchior Hansen, and A. L. Davidson are the members of the Program Committee of Raisin Proration Zone No. 1; that defendant, W. J. Cecil,

at the time of the commencement of this action was the duly appointed zone agent of said zone and that he was succeeded as zone agent by defendant, Lyman Lantze, prior to the trial of this case.

III

That pursuant to the provisions of said Act a proration program for raisins in said zone was instituted August 4, 1937, and continued in effect until it was amended effective July 23, 1940, which program as thus amended ever since has been and still is in force and effect; that said program is correctly set out in the answer to the first amended complaint on file herein, as Exhibit A thereof; that pursuant to the provisions of said program as amended a seasonal marketing program for raisins for 1940-1941 was duly and regularly adopted and approved and became effective September 7th, 1940, and which seasonal program is and [fol. 193] has been ever since said date in force and effect.

IV

That the essential features of said 1940-1941 seasonal marketing program for raisins (hereinafter referred to as the Program), together with the financing arrangement, are as follows:

(a) That 20% by variety of all "standard" raisins of the 1940 crop produced within the Zone shall be delivered by the producers into a surplus pool; and that an advance shall be made to producers on such raisins at the time of delivery by such producers of \$27.50 per ton for Muscat and Thompson Seedless raisins, and \$25.00 per ton for Sultanas, to be obtained from the proceeds of a non-recourse loan from Commodity Credit Corporation.

(b) That 50% by variety of all such "standard" raisins shall be delivered into a stabilization pool; and that an advance shall be made to producers upon such raisins at the time of delivery by such producers of \$55.00 per ton for Muscat and Thompson Seedless raisins, and \$50.00 per ton for Sultanas, to be obtained from the proceeds of said non-recourse loan from Commodity Credit Corporation.

(c) That the balance of such standard raisins, to wit, 30% of each producer's standard raisins, may be dis-

posed of by him without restriction into a primary channel of trade as "free tonnage", provided he has obtained a secondary certificate therefor, which certificate is issued to him when he has satisfied the pool requirements and upon payment of the certificate fee of \$2.50 per ton for each ton of the "free tonnage" (30% of his 1940 production of "standard" raisins.)

(d) That no "sub-standard" or "inferior" grade raisins [fol. 194] may be offered as "free tonnage" or delivered to the surplus or stabilization pools, but that such raisins shall be delivered into separate pools for disposal by the Program Committee at the best prices and under the fairest conditions obtainable for by-product purposes and that the net proceeds thereof shall be distributed ratably to the producers contributing to such pools.

That said proration program instituted August 4, 1937, and amended July 23, 1940, provides for disposing of the raisins in the surplus and stabilization pools, the essential portions of said provisions reading as follows:

"Disposal of Surplus Pool. Pursuant to this Section 4, the Committee shall sell or authorize the sale of surplus pool raisins as soon as practicable after delivery of same to the Committee or to any agency authorized by the Committee to receive such raisins; provided, however, that none of the standard raisins in such pool shall be sold or otherwise disposed of prior to January 1 of the marketing season in which such pool is established. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins. The Committee shall make provisions whereby a producer who delivers raisins to a surplus pool may, within the shortest time practicable, buy the same or an equivalent grade of raisins, subject to regulations to be established by said Committee. "Surplus pool raisins shall be sold only for assured by-product and other diversion purposes, and shall not be [fol. 195] sold into normal marketing channels."

"Disposal of Stabilization Pool. Pursuant to this Section 4 the Committee shall sell or authorize the sale of stabilization pool raisins as soon as practicable after delivery of

same to the Committee, or to any agency authorized by the Committee to receive such raisins, in such manner as to maintain stability in the markets and to dispose of such raisins. The procedure relative to the disposition of such raisins and the provisions of the contract of sale shall be established by the Committee with the prior approval of the Director; provided, however, that all packers of record with the Program Committee shall be given uniform notice of offers to sell stabilization pool raisins and, if allocation of tonnage among packers becomes necessary, such allocation shall be made under uniform rules, which are equitable as to all packers participating in offers to purchase, as formulated by the Committee and approved by the Director. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins; provided, however, that no sales of raisins from a stabilization pool, other than such raisins which are subject to special loaning or pooling arrangements with the Federal Government, shall be made at less than the prevailing market price for raisins of the same variety and grade on the date of sale.

[fol. 196] "Stabilization pool raisins shall be sold only into normal marketing channels."

V

That pursuant to the provisions of said Act and in accordance with the terms of the Proration Program for Raisins as amended, as set forth in said Exhibit "A", and particularly Article XX thereof, the said Program Committee duly established and declared effective the grades and rules and regulations governing the same for "standard" raisins, which same became effective September 10th, 1940, and ever since have been and now are in force and effect, and that this in conjunction with the definition in Article I of said program, as set forth in said Exhibit "A", fixes the quality and grades for "standard", "sub-standard" and "inferior" raisins of the 1940 crop.

VI

That 90% to 95% of the naturally dried raisins consumed in the United States are produced in said zone; and that

90% to 95% of such raisins produced in said zone are consumed outside the State of California.

VII

That Commodity Credit Corporation is a corporation organized pursuant to the laws of the United States of America for the purpose of making loans on agricultural commodities that are recommended by the Secretary of Agriculture of the United States and approved by the President of the United States. That prior to September 7th, 1940, the defendants herein had been negotiating with the officers of said Commodity Credit Corporation for the purpose of securing financial assistance for producers of 1940 crop raisins in the State of California, and that subsequent to September 7th, 1940, Commodity Credit Corporation executed a loan agreement with the defendant, Raisin Proration Zone No. 1, by and under the terms of which said corporation agreed to supply the funds for making the advances to producers as set forth in the 1940-1941 seasonal marketing program for raisins, and that the existence of said loan and the institution and existence of said proration program for raisins and the adoption, approval and operation of said seasonal marketing program for raisins for 1940-1941 constituted conditions precedent upon which such loan was made.

VIII

That the producer or farmer makes sun-dried raisins by placing the harvested bunches of ripe grapes upon trays laid upon the ground in the vineyard in such a way that the grapes are dried into raisins by the direct rays of the sun; that during the drying period the former turns the bunches of the grapes on the trays so that all sides of the grapes are exposed to the sun, thus securing a uniformity in drying; that when the grapes are properly dried, they are placed in "sweat" boxes where the moisture retained in the dried grapes automatically equalizes toward the right proportions, completing the curing of the grapes into raisins. Such process is entirely accomplished on the premises where the grapes are grown, and when properly done, the grapes have been entirely dried and cured and are a wholesome food and sound article of commerce. They are then substantially ready for market as raisins. The process of cleaning,

stemming, cap-stemming, seeding (muscats only), grading, sorting and packaging in various sized containers, which is not uniform in packing plants, tends to make the raisins more desirable commercially and thus create a greater demand for them in the market, but is not essential to production.

IX

That plaintiff is and has been a producer of raisins in said zone prior to and ever since the institution of a proration program for raisins therein on August 4th, 1937. That as such a producer of raisins plaintiff has dealt with the defendant, Raisin Proration Zone No. 1, and participated in said program during the 1938 crop season year, and applied for and received and accepted primary and secondary certificates for his raisins for such crop year. That during said year 1938 he was a producer only of raisins but in the year 1939 he became a packer and since then has been and now is both a producer and packer of raisins, and that he produced approximately 200 tons of raisins in said Zone in the year 1940. That no seasonal program for raisins was adopted for the crop year 1939 and no restrictions for said crop year were made under said proration program. That for the crop year 1940 plaintiff did not apply for nor receive any primary or secondary certificates for his raisins and has refused to apply for the same and has not participated in said 1940 seasonal program in any manner whatsoever. That the 1938 seasonal marketing program for raisins differed from said 1940 seasonal program, in that, said 1938 seasonal program did not have any stabilization pool requirement. That there are approximately forty raisin packers within the State of California, all of whom have packing plants and places of business located within said zone; that said packers made all their purchases and take all their deliveries of raisins within the State of California; that such sales are completed when the delivery is made and practically all sales are cash transactions; that before packing and shipping such raisins the packers clean, stem and package them, using various methods suitable to their respective plants and tending to make the raisins more desirable commercially; that such operation by the packers is not essential to production. That the raisins of the various producers delivered to any packer are commingled and no producer has

any knowledge or means of knowledge of the subsequent movement or ultimate use or consumption of the particular raisins delivered by him and has no legal title therein after such delivery to the packer and has no knowledge or means of knowledge as to whether the same ultimately moved in intrastate or interstate commerce, except that at times certain producer packers ship some of their own production directly into interstate commerce.

X

That plaintiff as a packer contracts for delivery of a very large percentage of the raisins he handles directly into interstate and foreign commerce; that plaintiff on September 7, 1940, had substantial orders for out of state delivery of raisins which he could not fill by purchase of "free tonnage" and could not fill at all because of said pools without complying with said program; that defendants in enforcing said program have directly and substantially interfered with and obstructed plaintiff's said business and have directly and substantially burdened interstate and foreign commerce.

XI

That defendants have attempted to enforce said act as implemented by said program against plaintiff and against those persons who have sold raisins to plaintiff since September 7, 1940; that since said date defendants have maintained watchers at and near plaintiff's place of business for the purpose of ascertaining from whom plaintiff purchases raisins and for the purpose of preventing sales of raisins to plaintiff in violation of said program; that defendants threaten to continue to enforce said program against plaintiff and persons selling 1940 crop raisins to him; that defendants have attempted, and are attempting and threatening, to force plaintiff and all other raisin growers to deliver and dispose of the 1940 crop by and through said program, and have attempted, and are attempting, to prevent disposal of such raisins except through said program.

XII

That plaintiff's said business has great value to plaintiff and that irreparable damage will be done to plaintiff by

defendants unless the enforcement of said program is enjoined.

XIII

That plaintiff is not estopped to question the constitutionality of said program.

That plaintiff has not been guilty of laches.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing findings, the Court holds:

I

That the Court has jurisdiction of this case.

II

That said seasonal marketing program constitutes and is a direct, substantial, and illegal interference with inter-[fol. 201] state and foreign commerce in wholesome and sound raisins.

III

That plaintiff is entitled to an injunction permanently enjoining defendants from enforcing or attempting to procure the enforcement in any manner of said program against plaintiff or anyone dealing with plaintiff in his capacity as a producer, buyer, packer or handler of wholesome and sound raisins, and enjoining defendants from in any manner annoying, harrassing or molesting plaintiff or persons doing such business with him.

IV

That Cross-complainant Raisin Proration Zone No. 1 is entitled to nothing by reason of its Cross-Complaint.

V

That the action should be dismissed as to the fictitious defendants.

Let judgment be entered accordingly.

Done in open Court this 26th day of November, 1941.

Albert Lee Stephens, Circuit Judge. _____, District Judge. Campbell E. Beaumont, District Judge.

[fol. 202] IN DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVI-
SION

No. 78 Civil

PORTER L. BROWN, Plaintiff,

vs.

W. B. PARKER, Director of Agriculture, AGRICULTURAL PRO-
RATE ADVISORY COMMISSION, Raisin Proration Zone No. 1,
Program Committee, W. B. Parker, Ira Redfern, Lyman
Lantze, James Langford, Mark G. Johnson, C. M. Brown,
Wm. F. Darsie, Dr. Dean McHenry, Preston McKinney,
H. C. Anderson, A. K. Kelly, Renald Matrofini, Alex
Berg, Mesrob Mirigian, Melchior Hansen, A. L. David-
son, W. J. Cecil, J. C. Harlan, One Doe, Two Doe, Three
Doe, Four Doe, Five Doe, Six Doe, Seven Doe and Eight
Doe, Defendants

RAISIN PRORATION ZONE No. 1, a Proration Zone, Cross-Com-
plainant,

vs.

PORTER L. BROWN, Cross-Defendant.

FINAL JUDGMENT—Filed December 4, 1941

This case came on regularly for trial before a statutory three-judge court convened before the Honorable Campbell E. Beaumont, United States District Judge for the Southern District of California, by calling to his assistance the Honorable Albert Lee Stephens, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, and the Honorable Leon R. Yankwich, United States District Judge for the Southern District of California, pursuant to Section 266 of the Judicial Code, as amended, (28 U. S. C. A. [fol. 203] Section 380), sitting in its courtroom in the Federal Building, in the City of Fresno, in the Northern Division of the Southern District of California.

Plaintiff was represented by his attorneys and solicitors, Messrs. Aten & Aten, and G. L. Aynesworth, Esq., and the defendants by Earl Warren, Esquire, Attorney General of the State of California, and Messrs. Walter L. Bowers,

W. R. Augustine and Gilbert F. Nelson, Deputies Attorney General, appearing for W. B. Parker, Director of Agriculture, Agricultural Prorate Advisory Commission, and W. B. Parker; Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, and Preston McKinney, members of said Commission, and J. C. Harlan; and Strother P. Walton, Esq., appearing for Raisin Proration Zone No. 1, Program Committee, and H. C. Anderson, A. K. Kelly, Renald Mastrofini, Alex Berg, Mesrob Mirigian, Melchior Hansen, A. L. Davidson, and W. J. Cecil, members of said Committee.

The trial of this action was commenced on April 11, 1941, and concluded and submitted to the court for its consideration and decision on April 12, 1941; that thereafter upon the Court's own motion the case was reopened for the purpose of taking more evidence, and on the 16th day of October, 1941, further evidence was offered and received and the cause then again submitted; and after due consideration thereof the court herein made and filed its Findings of Fact and Conclusions of Law.

Now, Therefore, pursuant to the written Findings of Fact and Conclusions of Law herein made and entered,

It Is Hereby Ordered, Adjudged And Decreed:

1. That the seasonal marketing program for raisins for [fol. 204] 1940-1941 adopted pursuant to the provisions of the Agricultural Prorate Act of the State of California (Chapter 754, Statutes of 1933) as amended, constitutes and is a direct, substantial, and unconstitutional interference with interstate and foreign commerce in wholesome and sound raisins.

2. That the defendants herein, and each of them, and their respective agents, deputies, employees, attorneys and successors, and all other persons acting under or through their authority be, and each of them is, hereby permanently restrained and enjoined from enforcing or attempting to enforce or procure the enforcement of said program, or any portion thereof, against plaintiff, or anyone dealing with plaintiff, in his capacity as a producer, buyer, packer or handler of wholesome and sound raisins, but not as to unwholesome, unsound or inferior raisins, and from in any manner annoying, harrassing, or molesting plaintiff or persons doing such business with plaintiff.

3. The reason for the issuance of a permanent injunction herein is that said program violates Article I, Section 8, of the Constitution of the United States, and that defendants have enforced said program against plaintiff and persons doing business with plaintiff and threaten to continue such enforcement.

4. That Cross-Complainant Raisin Proration Zone No. 1 take nothing by reason of its Cross-Complaint;

5. That the action is dismissed as to the fictitious defendants; and

6. That plaintiff have judgment for his costs herein expended, taxed at \$28.75.

[fol. 205] Done in open court this 26th day of November; 1941.

Albert Lee Stephens, Circuit Judge; — — —, District Judge; Campbell E. Beaumont, District Judge.

[File endorsement omitted.]

[fol. 206] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted] D

PETITION FOR APPEAL—Filed December 26, 1941

To the Honorable Judges of the Above Entitled District Court of the United States:

The defendants herein, W. B. Parker, Director of Agriculture, Agricultural Prorate Advisory Commission, Raisin Proration Zone No. 1, Program Committee, W. B. Parker, Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm F. Darsie, Dr. Dean McHenry, Preston McKinney, H. C. Anderson, A. K. Kelly, Renald Mastrofini, Alex Berg, Mesrob Mirigian, Melchior Hansen, A. L. Davidson, W. J. Cecil and J. C. Harlan, and each of them, feeling aggrieved by the final decree and permanent injunction rendered by the Honorable Albert Lee Stephens, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, the Honorable Campbell E. Beaumont

and the Honorable Leon R. Yankwich, Judges of the District Court of the United States for the Southern District of California, organized and sitting as a three-judge court under and by virtue of the provisions of Section 380 of [fol. 207] the United States Code Annotated (Judicial Code Section 266, as amended) for the hearing and determination of this cause, and entered in the above entitled cause on or about December 4th, 1941, do hereby appeal from said final decree and permanent injunction to the Supreme Court of the United States.

The particulars wherein they, and each of them, consider such final decree and permanent injunction erroneous are set forth in the Assignment of Errors filed herewith, to which reference is hereby made.

They pray, and each of them prays, that this appeal be allowed; that a transcript of the record, proceedings and papers upon which said final decree and permanent injunction was based, made and entered, duly authenticated, may be transmitted to the Supreme Court of the United States under the rules of such court in such cases made and provided.

And they further pray, and each of them prays, that the proper order relating to the required security to be required of them be made.

Dated: December 26, 1941.

Earl Warren, Attorney General of the State of California, Walter L. Bowers, W. R. Augustine, Gilbert F. Nelson, Deputies Attorney General.

Attorneys for defendants, W. B. Parker, Director of [fol. 208] Agriculture, Agricultural Prorate Advisory Commission, and W. B. Parker, Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, and Preston McKinney, members of said Commission, and J. C. Harlan.

Strother P. Walton, Attorney for defendants, Raisin Proration Zone No. 1, Program Committee, and H. C. Anderson, A. K. Kelly, Renald Mastrofini, Alex Berg, Mesrob Mirigian, Melchior Hansen, A. L. Davidson, and W. J. Cecil, members of said Committee.

ORDER ALLOWING APPEAL

The foregoing petition is hereby granted and the appeal of the defendants named, and each of them, is allowed upon giving bond as required by law in the sum of \$500.00.

Dated: December 26, 1941.

Albert Lee Stephens, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, sitting under provisions of Section 380 U. S. C. A.

[fol. 209] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR—Filed December 26, 1941

Now come the defendants in the above entitled cause, W. B. Parker, Director of Agriculture, Agricultural Prorate Advisory Commission, Raisin Proration Zone No. 1, Program Committee, W. B. Parker, Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, Preston McKinney, H. C. Anderson, A. K. Kelly, Renald Mastrofini, Alex Berg, Mesrob Mirigian, Melchior Hansen, A. L. Davidson, W. J. Cecil and J. C. Harlan, and each of them, and in connection with their petition for appeal, present and file the following Assignments of Error upon which they will rely on their appeal to the Supreme Court of the United States from the final decree and permanent injunction of the above entitled District Court of the United States, entered on or about December 4, 1941.

That the District Court of the United States, in and for the Southern District of California, Northern Division, and the Special Three Judge Court organized and sitting herein, erred:

1. In failing and refusing to grant defendants' motion to dismiss the above entitled action and in failing and refusing [fol. 210] to dismiss the same, and in issuing a permanent injunction against the defendants herein.

2. In finding and holding that plaintiff has not been guilty of laches and is not estopped to question the constitu-

tionality of the seasonal proration program for raisins herein mentioned.

3. In holding as a conclusion of law that the court has jurisdiction of this case and in failing to dismiss this action for lack of jurisdiction.

4. In holding as a conclusion of law that the seasonal marketing program for raisins mentioned herein and in this action constitutes and is a direct, substantial and illegal interference with interstate and foreign commerce in wholesome and sound raisins.

5. In holding as a conclusion of law that plaintiff is entitled to an injunction permanently enjoining defendants from enforcing or attempting to procure the enforcement in any manner of said seasonal proration or marketing program for raisins against plaintiff or any one dealing with plaintiff in his capacity as a producer, buyer, packer or handler of wholesome and sound raisins, and enjoining defendants from in any manner annoying, harassing or molesting plaintiff, or persons doing such business with him.

6. In failing to specify whether the matters found in Paragraph I of the Findings were or occurred in connection with interstate or intrastate transactions, and in failing to expressly find that all of such penalties and all of the business and all of the damage set forth and mentioned in Finding I were solely and wholly intrastate.

[fol. 211] 7. In finding in Paragraph I of the Findings that defendants "have directly interfered with and obstructed plaintiff's said business and thereby damaged the plaintiff in a sum in excess of \$3,000.00", contrary to the evidence introduced and not in response to any issue or pleading in the case.

8. In overruling and disregarding defendants' objections to the finding set forth in Finding VI, and leaving in said finding the statement "that 90% to 95% of the naturally dried raisins consumed in the United States are produced in said zone" without any evidence whatsoever in support thereof, and in leaving in said finding the statement "that 90% to 95% of such raisins produced in said zone are consumed outside the State of California", contrary to

the evidence and the stipulation that "such raisins are ultimately consumed both within and without the State of California, but 90% to 95% of the raisins consumed as raisins, and for human consumption, are ultimately consumed outside of the State of California."

9. In overruling and disregarding defendants' objections to the findings contained in Finding VIII and leaving in said finding the statement that "where the moisture retained in the dried grapes automatically equalizes toward the right proportions, completing the curing of the grapes into raisins. Such process is entirely accomplished on the premises where the grapes are grown and when properly done the grapes have been entirely dried and cured and are a wholesome food and sound article of commerce.", contrary to the evidence and the statement of facts, and also leaving in said finding the statement that "the process of [fol. 212] cleaning, stemming, cap-stemming, seeding (muscats only), grading, sorting and packaging in various sized containers, which is not uniform in packing plants, tends to make the raisins more desirable commercially and thus create a greater demand for them in the market, but is not essential to production.", contrary to the evidence and the stipulation of facts.

10. In overruling and disregarding defendants' objections to the finding contained in Finding IX, and in leaving in said finding the statement "that before packing and shipping such raisins the packers clean, stem and package them using various methods suitable to their respective plants and tending to make the raisins more desirable commercially; that such operation by the packers is not essential to production.", contrary to the evidence and the stipulation of facts.

11. In overruling and disregarding defendants' objections to each and all of the findings set forth in Paragraph X thereof, and in leaving in said paragraph X the findings therein contrary to the evidence and the stipulation of facts, and in leaving in said finding the holding that the defendants "in enforcing said program have directly and substantially interfered with and obstructed plaintiff's said business and have directly and substantially burdened interstate and foreign commerce."

12. In holding and finding as a fact in Finding XII "that plaintiff's said business has great value to plaintiff and that irreparable damage will be done to plaintiff by defendants unless the enforcement of said program is enjoined."

[fol. 213] 13. In holding and ruling that the seasonal proration program for raisins directly burdens, and in holding that it effectively prevents, the free flow of interstate commerce.

14. In holding and ruling that such program is not based upon the protection of the industry through exclusion from the market of unfit raisins.

15. In holding and ruling that such program is not a regulation of proper conditioning of the raisins prior to their being offered to the consumer.

16. In holding and ruling that the production of raisins and the drying and curing thereof on the premises where the grapes are grown is complete on said premises and before said raisins have been fully cured and have been cleaned, stemmed and packaged.

17. In holding and ruling that the cleaning, stemming, cap-stemming, seeding, sorting and grading is not any part of production of such raisins, and is not essential to such production.

18. In holding and ruling that the purpose and necessary effect of the seasonal proration program is to place a controlled embargo on the State's raisin production.

19. In holding and ruling that the seasonal proration program is simply a means of controlling the supply of raisins into interstate trade channels.

20. In holding and ruling that any regulation of the amount of wholesome raisins which may be produced, harvested and prepared for market in accordance with and in the amount and at the times that the available market will absorb the same is a direct burden and obstruction of interstate commerce and not an aid and benefit thereto.

[fols. 214-224] Wherefore, defendants and appellants herein pray that said final decree be reversed and said permanent injunction dissolved, and that said District Court

of the United States, in and for the Southern District of California, Northern Division, and the Three Judge Court organized and sitting therein, be ordered to enter a decree reversing the decision of the lower court in said cause, and dissolving the said permanent injunction, and for such other and further relief as to the Court may seem fit and proper.

Respectfully submitted, Earl Warren, Attorney General. Walter L. Bowers, W. R. Augustine, Gilbert F. Nelson, Deputies Attorney General. Strother P. Walton, Attorneys for Defendants and Appellants.

[fol. 225] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER TO TRANSMIT ORIGINAL EXHIBITS—Filed February 13, 1942

It being proper in the opinion of the Presiding Judge in the court from which the appeal herein is taken and the Judge who signed the order allowing such appeal and the citation herein that the following described instruments, papers, documents and exhibits in evidence in the above cause be inspected by the Supreme Court of the United States upon the appeal thereto in said cause:

It Is Therefore Hereby Ordered that the Clerk of this court safely transmit to the Clerk of the Supreme Court of the United States at Washington, D. C., to be safely kept by said Clerk for the inspection and use by said Supreme Court in the consideration of the appeal in this cause the following records, instruments, papers, documents and exhibits in the above entitled cause, to wit:

- (a) Plaintiff's Exhibits 1 to 5, both inclusive;
- (b) Plaintiff's Exhibits 7 to 14, both inclusive;
- (c) Defendants' Exhibits A, B, C and D.

It is further ordered that it shall be unnecessary to print any of the same as part of the printed record on appeal herein, and that upon the final determination of said cause in the Supreme Court of the United States said exhibits

shall be safely returned to the Clerk of this court to be kept by him on file herein.

Dated: February 13th, 1942.

Albert Lee Stephens, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, sitting under provisions of Section 380 U.S.C.A.

We, the undersigned counsel for the respective parties to the above entitled action, do hereby stipulate and agree to the above and foregoing order.

Dated: February 11, 1942.

Aten & Aten & G. L. Aynesworth, Counsel for Plaintiff and Appellee. Earl Warren, Attorney General, Walter L. Bowers, Deputy Attorney General, Strother P. Walton, Counsel for Defendants and Appellants.

[fol. 231] IN UNITED STATES DISTRICT COURT

**Statement of the Evidence from Reporter's Transcript of
April 11 and 12, 1941.**

Fresno, California, Friday, April 11, 1941, 10:00 A. M.

The Clerk: Porter L. Brown vs. W. B. Parker and others.

PORTER L. BROWN, the plaintiff herein, called as a witness on his own behalf, being first duly sworn, testified as follows:

Judge Beaumont: You may be seated, Mr. Brown. Mr. Aten, it seems that it would be well at this time, before any testimony is taken, if you will make a statement, which I am sure will be agreed to, as to the nature of the limitation of the issues and, also, as to the stipulation that has been filed. However, I think the stipulation probably speaks for itself in that respect. Is this the original?

Judge Beaumont: This appears to be the original, not the carbon copy. So it will be filed as a part of the record in this case. And that was your intention?

Mr. Aten: That was the intention.

Mr. Bowers: Will it be designated as an exhibit if it is part of the record?

Judge Beaumont: If you desire to have it made as an exhibit, you may do so, but if it is a part of the record, it

will be before the Court for all purposes. If you think it would be more easily referred to as an exhibit, it may be received for that purpose, but it isn't necessary, so long as it is part of the record of the case. It has been suggested by Judge Yankwich that it be marked as parties' joint [fol. 232] exhibit. Is that agreeable?

Mr. Bowers: That is agreeable.

Mr. Aten: That is satisfactory. Under the stipulation the parties have reserved the right to introduce evidence on any matter that they deem material, and we also made the reservation, in the stipulation, that matters contained in the stipulation, as to the facts, that we reserve the right to argue that they are immaterial. I think the only matters, as far as I know at this time, on which the plaintiff will introduce evidence is on the jurisdictional issue and on the method of disposal of raisins when they go through the packing houses and into interstate commerce.

Judge Stephens: Isn't that fully set out in the stipulation?

Mr. Aten: It is quite fully set out, but there is a reservation, as to Muscat raisins, as to both parties.

Mr. Bowers: That is correct, may it please the Court. We agreed, as far as we could, on that, but there were other matters which we claim took place and we didn't agree upon, so we reserve them.

Mr. Aten: It is agreed, so far as the plaintiff is concerned, that the case be submitted upon the constitutionality of the program, as implementing the Prorate Act; that the act itself is not here attacked. Is that as you understood it?

Mr. Bowers: That is correct. That is agreeable as to your defendants, is it not?

Mr. Walton: Yes, as far as we are concerned.

Judge Beaumont: Very well. You may proceed with your testimony.

[fol. 233] Direct Examination.

By Mr. Aten:

Q. Your name?

A. Porter Brown.

Q. You are the plaintiff in this action?

A. Yes, sir.

Q. What is your business?

A. I am a grower and a packer.

Q. How long have you been connected with the raisin business?

A. Twenty-five years.

Q. You have been in the packing business for others or yourself during that time?

A. Yes, sir.

Q. And have also been interested in growing for about the same time?

A. Yes, sir.

Q. Have you, in the last five years, kept yourself informed as to markets and production and other matters affecting the raisin business, generally?

A. Yes, sir.

Q. And in detail?

A. Yes, sir.

By Mr. Aten:

Q. Mr. Brown, you allege in your pleadings that you had made contracts in May 1940 for disposal of raisins in the fall of 1940; that you had sold, under contract, certain tons of raisins?

A. Yes, sir.

Q. I have here those three contracts that were introduced before. I refer you to Exhibit No. 1, introduced in this hearing before, and ask you if that is one of the contracts [fol. 234] that you had at that time?

A. Yes, sir.

Mr. Aten: I will offer this contract, if the Court please, as Plaintiff's Exhibit No. 1. And I will offer all of these exhibits as I come to them, and they can have the same number that they bore in the prior hearing.

Judge Beaumont: I think that would be well. Let it be received in evidence and marked as Plaintiff's Exhibit 1.

By Mr. Aten:

Q. This contract, Exhibit No. 1, was for how many tons, Mr. Brown?

A. 125 tons.

Q. That was made in May, as it shows, of 1940, and at what price; that is, the sales price?

A. Three cents a pound.

Q. That is, \$60 a ton?

A. Yes, sir.

Q. Was that the price at that time?

A. That was the going price—the going sales price at the time.

Mr. Aten: We will offer the letter that was introduced before as Exhibit 2, and ask that it go in now as Exhibit 2; that is, the letter written by the American Trading Company, the cancellation for non-delivery. And in that letter they stated that the price was now 4 cents a pound and that the whole damage amounted to \$2,275 on account of that contract. Is that correct?

Mr. Bowers: No objection to it.

Judge Beaumont: Let it be received in evidence and marked Plaintiff's Exhibit 2.

Mr. Aten: Very well. We now offer Exhibit 3, which [fol. 235] was introduced in the prior hearing in this matter, a contract made with West Coast Growers and Packers in May 1940.

Q. For how many tons was that, Mr. Brown?

Judge Beaumont: Well, doesn't the exhibit speak for itself?

Mr. Aten: Not in tons. It is in cases. 10,000 cases.

Judge Beaumont: Very well.

By Mr. Aten:

Q. What tonnage would that be?

A. 125 tons.

Mr. Aten: We offer that.

Judge Beaumont: Let it be received in evidence and marked Plaintiff's Exhibit 3.

By Mr. Aten:

Q. Is it customary, Mr. Brown, and has it been customary for the packers to sell raisins in advance of the growing season?

A. Yes, sir.

Q. And were others doing it during this same time?

A. Yes, sir.

Q. Were they making sales on the same basis that you made them?

A. Yes, the smaller packers were making sales on the same basis.

Q. Referring to the third contract, the one that has been marked Exhibit 4 in the prior proceedings, for how many tons was that?

A. 200 tons.

Q. And the contract shows it at the same price?

Judge Beaumont: Do you offer that?

Mr. Aten: We offer it as Exhibit 4.

Judge Beaumont: Let it be received and marked as [fol. 236] Plaintiff's Exhibit 4.

By Mr. Aten:

Q. Did you have other contracts, Mr. Brown, that you had made in that month?

A. Yes; one.

Q. For the sale of raisins in the fall of 1940?

A. Yes, sir.

Q. With whom?

A. We made one contract with the Dried Fruit Distributors of California for 10,000 cases.

Q. And for how much tonnage?

A. 125 tons.

Q. At the same price?

A. Yes, sir.

Q. I will ask you if this is that contract?

A. Yes, sir.

Q. Mr. Brown, you have mentioned that you had one other contract with the Dried Fruit Distributors of California for 125 tons. What other contracts did you have, if any, that you made in May 1940, for fall delivery?

A. I had another contract with the American Trading Company for 15,000 cases.

Q. And the tonnage of that?

A. That is 187½ tons.

Q. On the same basis as the other contracts?

A. Yes, sir.

Q. What did that make the total tonnage that you had firm contracts on, in May; that is, for the fall of the year?

A. 762½ tons.

Q. On the basis of a sales price of 3 cents?

[fol. 237] A. Yes, sir.

Mr. Aten: I will now ask to introduce in evidence the Proration Program Bulletin of February 8, 1941, introduced as Exhibit No. 5 in the preliminary hearing here, and ask that it be received again as an exhibit under the same number.

Mr. Bowers: I object to that as incompetent, irrelevant and immaterial under the present issues. The only materiality I see is that it gives certain statistics of the pool operations, which are given in the stipulation.

Mr. Aten: It is material, of course, to show the interference with commerce. Also, there is a statement, contained in the bulletin, that the price of raisins, that is, the sweatbox price, the price to the grower, if it had not been for the program, would have been for the 1940 raisins not over \$40 per ton; a statement made by the defendant in the action.

Judge Beaumont: We are of the opinion that it should be received in evidence. It may be received and marked as Plaintiff's Exhibit No. 5. The objection is overruled.

By Mr. Aten:

Q. You testified a moment ago, Mr. Brown, about a contract with the Dried Fruit Distributors for 125 tons. Is this the contract?

A. Yes, sir.

Q. You testified about a contract with the American Trading Company for 187½ tons. Is this that contract?

A. Yes, sir.

Mr. Aten: I now offer a communication from the Proration Program Committee, dated January 13, 1941, which was introduced in the prior hearing as Exhibit 7, in which it [fol. 238] is stated that now they are offering raisins for sale out of the pool.

Judge Beaumont: There being no objection, let it be received in evidence and marked as Plaintiff's Exhibit 7.

Mr. Aten: I offer Exhibit 8, the contract, about which the witness has testified, with the Dried Fruit Distributors of California, dated May 22, 1940, for the sale of 125 tons of raisins at the price of 3 cents per pound, as Plaintiff's Exhibit 8.

Judge Beaumont: Let it be received in evidence and so marked.

Mr. Aten: I offer Plaintiff's Exhibit 9, the contract, about

which the witness has heretofore testified, with the American Trading Company, dated May 14, 1940 for 187½ tons at the same price.

Q. I believe you stated, Mr. Brown, the total tonnage covered by these various sales contracts, did you?

Judge Beaumont: He did so state.

Mr. Aten: Yes.

Q. You had how many tons of your own?

A. 200 tons.

Q. 200 tons. So in order to fill these contracts how many tons was it necessary for you to purchase?

A. 562½ tons.

Mr. Aten: Yes, your Honor. I offered Exhibit No. 9.

Judge Beaumont: I think the Court should rule on that before we proceed with this other matter. Let it be received in evidence and marked as Plaintiff's Exhibit 9.

Mr. Bowers: What is the date of that?

Mr. Aten: It is May 14, 1940, with the American Trading Company for 187½ tons at 3 cents per pound.

Judge Beaumont: Let the offered exhibit be received and marked as Plaintiff's Exhibit 9.

By Mr. Aten:

Q. You did keep in touch with markets and other conditions affecting the markets and conditions that would affect the markets at the time raisins were ready for delivery, did you not?

A. Yes, sir.

Q. During all of these years?

A. Yes, sir.

Q. You had bought and sold raisins, pre-season, as in the case of these particular contracts, for many years?

A. Yes, sir.

Q. What was the sweatbox price before the program went into effect on September 7th?

A. \$45 a ton.

Q. Was that the basis on which you fixed the price of \$60 a ton for the sold goods?

A. Yes, sir.

Q. What was the sweatbox price immediately following the going into effect of the program and continuing through the fall?

A. \$55 per ton.

Q. That is an increase of \$10 per ton?

A. Yes, sir.

Q. What raisins were available at that price? I am assuming you were operating under the program. If you had operated under the program, what raisins were available at that price?

A. Under the program, only 30 percent of the raisins [fol. 240] were available.

Q. That is, 70 percent were set aside in these pools?

A. Yes, sir.

Q. Only 30 percent was available?

A. Yes, sir.

Q. And the sweatbox price, from that time on, was \$55?

A. \$55 or better.

By Mr. Aten:

Q. Were any raisins available, Mr. Brown, at a less price, for the filling of those contracts, than \$55 per ton?

A. No, sir.

Mr. Bowers: We object to that as indefinite, as to what time he is speaking of. The contracts were made in May.

By Mr. Aten:

Q. As a matter of fact, could you, at the time the contracts called for delivery, have filled the contracts from the 30 percent free tonnage, so-called, under the program, if you had operated under it? Were those raisins available?

Mr. Bowers: We object to that as calling for a conclusion of the witness and incompetent. Obviously, under the stipulation as to the amount of tonnage, there were sales, so they must have been available.

Judge Beaumont: What you are doing, you are asking him to determine the matter without giving the facts. You are asking him if it was available. I don't believe the objection was made on that basis. However, the objection is overruled. You may answer.

A. I tried to buy raisins at that time. There was no [fol. 241] money here for raisins under the prorate program, and the growers were not inclined to sell.

By Mr. Aten:

Q. That is, the grower had a disposal of 70 percent, under the program, before the 30 percent was available?

A. Yes, sir.

By Mr. Aten:

Q. Were there raisins available, in the 30 percent free tonnage at that time, sufficient for you to fill your contracts?

A. No, sir.

By Mr. Aten:

Q. You have testified that you produced 200 tons—

A. Yes, sir.

Q. —as a grower. Then if you operated under the program, what amount would you have to pay into the program for its operation?

A. \$150.

Q. If you had operated under the program, what extra cost, if any, did the program impose on you in the purchase of raisins?

A. \$1.50 per ton extra.

Q. \$1.50 per ton extra. In addition to these 562½ tons that you would have had to purchase to fill these contracts, what other tonnage had you anticipated purchasing during the year in the conduct of your business?

Mr. Bowers: We object to that as purely incompetent, as to what his anticipations might have been.

Mr. Aten: If the Court please, it is alleged that he anticipated shipping 2500 tons in addition to the actual contracts. This man is in business and has been in business [fol. 242] for many years. He should be allowed to state his anticipated business.

Mr. Bowers: It is a well recognized rule that anticipatory profits or losses are not competent in determining the element of damages.

Judge Beaumont: I think it should be overruled. You may proceed.

By Mr. Aten:

Q. What tonnage had you anticipated?

A. I expected to ship, during the season, 3,000 tons of raisins.

Judge Yankwich: That is based upon your average for a period of years, is it?

A. That is based on my tonnage for the prior year, or 2,000 tons, with an anticipated increase.

By Mr. Aten:

Q. Mr. Brown, I will ask you to summarize, then, what you have already said. What is the total of the difference between operating under the program and without it, from what you have said, summarizing the figures?

Mr. Bowers: We object to that. He has already given the figures. It has been asked and answered.

Judge Beaumont: You may answer. Objection overruled.

A. It would figure about \$5800.

By Mr. Aten:

Q. Let me ask you: What items figure that amount?

A. The figure of \$10 a ton on 562½ tons, plus the \$150 penalties, and plus \$1.50 per ton extra buying cost.

Q. I don't believe that the total you gave is the total figure. What is your total figure?

A. \$5800.

Q. I don't believe you figured your \$1.50 a ton on your [fol. 243] 3,000 tons.

Judge Beaumont: This goes to show that Mr. Bowers' statement was very proper. It is a matter of computation.

Mr. Aten: It is a matter of computation, yes. I have prepared, if the Court please, in triplicate, and a copy for counsel, a summary of it, and also a summary of the principles governing the proof of the loss and damage, which I will submit at this time.

Judge Yankwich: Wouldn't it be more properly submitted in conjunction with your argument, as a summary of the evidence in the case?

By Mr. Aten:

Q. Mr. Brown, let me ask you this: In the transaction of your business do you or do you not transport the raisins from the producer to your plant? What is your custom in that respect?

A. We have equipment to haul the raisins from the grower, and in the majority of cases we haul the raisins from the growers' ranches.

Q. Do you mean by that you take delivery of the raisins on the farm; you get them on the farm and take the delivery there?

A. We haul them.

Q. In the majority of cases?

A. Yes, sir.

Q. These contracts that have been introduced, as counsel has pointed out, are made mostly with people in the state. Will you state where those were to go? For instance, take your American Trading Company contract. Where were those raisins to go? Where were they to be shipped to?

Mr. Bowers: We object to that as incompetent, irrelevant [fol. 244] and immaterial. It is beyond the contract.

Mr. Aten: The contract doesn't state, I believe.

Mr. Bowers: The contract states they are to be delivered to them, f.o.b. its plant at Kerman.

Judge Beaumont: I think that objection should be overruled.

Mr. Aten: First I will ask the general question. I will withdraw that for the moment.

Q. In your business in 1939 and in your business in 1940 what percentage of your shipments of raisins went intra-state, that is, within the state, and what percentage went without the state?

Judge Stephens: Isn't there a stipulation that Mr. Brown's raisins took the usual course?

Mr. Aten: That is the fact.

Judge Stephens: Will there be any proof that they didn't take the usual course that is covered in the stipulation, and that a large percentage of his raisins did go out of the state, or were supposed to have gone out, at the time this contract was made?

Mr. Bowers: No, I don't think so.

Judge Stephens: Just the same as any other large amount of raisins?

Mr. Bowers: I don't follow the Court on that, in regard to the stipulation. The stipulation says that ultimately the bulk of the raisins that are used for human consumption are consumed by the ultimate purchaser or consumer out-

side the state. But there is no stipulation that the bulk of Mr. Brown's sales, or the bulk of any other sales by packers—

[fol. 245] Judge Stephens: I understand that, but that is exactly what I am asking. Do you contend that his raisins took a different course than that referred to as raisins in general?

Mr. Bowers: No.

Judge Stephens: It seems to me to be covered by the stipulation.

Mr. Bowers: We consider it is typical; that he made his sales; all were intrastate; and delivered them all intrastate.

Judge Stephens: I understand your point on that, but they would eventually leave the state.

Mr. Bowers: I think the bulk of them ordinarily left the state. I am not saying they did. There is no way of telling.

Judge Stephens: Your point is that as far as this contract is concerned, they may not have left the state?

Mr. Bowers: Yes.

Judge Stephens: But you don't contend—

Mr. Bowers: We don't deny that on the average 90 percent or so, that were used for human consumption, went outside of the state.

Judge Stephens: And that applies to the raisins that are immediately being inquired about?

Mr. Bowers: As to their ultimate consumption, as far as I know, it does. I haven't any knowledge or any proof on it at all.

Judge Stephens: Will we so consider it?

Mr. Bowers: I don't know what else you can consider, because I don't think there is any way in God's world to [fol. 246] tell.

Mr. Aten: I think your Honor stated the matter correctly, as far as the law is concerned.

Judge Beaumont: As far as the facts are concerned, is there any disagreement here? If there is, I think Mr. Aten should proceed with his proof.

Mr. Aten: We are prepared to show that 90 percent, at least, of Mr. Brown's shipments under his contracts were to go directly out of the state, either into foreign countries or other states. While we think your Honor's statement—

Judge Stephens: Don't you mean to say "eventually," instead of "directly"?

Mr. Aten: No; I mean directly.

Mr. Bowers: We are not prepared to stipulate on that. Your statement about "eventually," that they eventually go there, I agree with Judge Stephens' statement that eventually the stipulated figures would apply to any of the raisins; raisins of this plaintiff, or any other, as far as I know.

Judge Yankwich: Mr. Bowers, do you intend to go beyond the limitation that you have on page 5, lines 1 to 7; that is, that the individual producer never knew whether his particular raisins were going to go into interstate or intrastate commerce, and that on the basis of the doctrine of averages, probably the same percentage went into interstate commerce for each particular producer, because you couldn't segregate those that were kept in the state and those that went out; isn't that right?

Mr. Bowers: That is correct.

Judge Yankwich: Isn't that the extent of your limitation? [fol. 247] Mr. Bowers: That is correct.

Judge Yankwich: Then, of what materiality is it whether these particular raisins would ultimately—

Mr. Bowers: I don't think it is material.

Judge Yankwich: The effect of interstate commerce isn't determined by what became of the raisins that this witness handled, but what the prorate program achieved.

Judge Stephens: I think it does, as to whether there was a damage.

Judge Yankwich: Yes, except for damages.

Judge Stephens: Nobody is contending here that the 5 or 10 percent, that is wholly consumed in the state, went to make up the raisins here?

Mr. Bowers: No; there is no contention about that.

Mr. Aten: While we thought it wasn't material, there was some contention about it and some suggestion for it. We didn't want to leave any question about it at all.

Judge Beaumont: Proceed, Mr. Aten.

By Mr. Aten:

Q. What percentage of the raisins handled by you in the year 1939 went into interstate commerce?

Mr. Bowers: We object to that, if the Court please, as immaterial.

Mr. Aten: Well, we have also covered that by the stipulation.

Judge Beaumont: It is sustained. I think counsel has withdrawn the question.

By Mr. Aten:

Q. What percentage of the raisins, provided by these contracts in evidence, were shipped by you out of the state?

[fol. 248] Mr. Bowers: Just a moment. We make the same objection to that. The contracts speak for themselves.

Mr. Aten: I am asking him directly.

Judge Stephens: You are asking what percentage of these raisins, that are the subject of these contracts, went into interstate commerce. That cannot be that, by the terms of the agreement—

Mr. Bowers: Yes.

Judge Stephens: I think we have an understanding. You are liable to undo it.

Mr. Aten: I am not afraid of the fact of undoing it if we can get the facts before the Court. If the Court please, there is no provision in the contract as to where they shall be delivered or shipped, or anything about them.

Judge Beaumont: As I understand the question, the use of the expression, "covered by the contract," was only for the purpose of identifying particular raisins?

Mr. Aten: That is right, as to where these particular raisins, covered by these contracts, were to be shipped.

Judge Beaumont: Reframe your question so there will be no question about the meaning of any of the terms that you use, Mr. Aten.

Mr. Aten: I think, since it seems to be a matter of controversy, if I took each individual contract it might be better. I tried to do it in one group, so to speak, but if we take the individual contracts it might be better.

Judge Beaumont: Are you in a position to ask him if he knew where certain shipments of raisins were destined?

Mr. Aten: Yes.

Judge Beaumont: And if they were shipped? Did he [fol. 249] actually ship them?

Mr. Aten: Where they were to go.

Judge Beaumont: If he actually shipped them, that covers it.

Mr. Aten: What happened afterwards, either to increase or diminish the damage, is immaterial. It is a question as to where they were to go.

Judge Beaumont: Well, you proceed.

By Mr. Aten:

Q. Take the contracts with the Dried Fruit Distributors of California: Where were those raisins to be shipped?

Mr. Bowers: Just a moment. We object to that as indefinite as to the statement, "where they were to be shipped." As to where they were to be shipped under the contract, or by Mr. Brown, the contract itself speaks for that. If this is to be a separate shipment by somebody else, then we want the question to definitely designate that.

Judge Stephens: Let me ask a question of the witness.

Mr. Aten: Yes.

Judge Stephens: You did not have any understanding with anybody that any of these raisins should be shipped out of the state, did you?

A. It was understood that they were to be shipped out of the state, your Honor. For instance—

Judge Stephens: Well, can't you just answer the question? We are trying to shorten it.

Mr. Bowers: I move to strike that answer as not responsive, as to what was understood.

Judge Stephens: Yes. The answer may go out. Did you have any understanding with any of these people that they [fol. 250] would ship them out of the state?

A. No, sir.

Judge Stephens: Did you care whether they were shipped out of the state or not?

A. Not particularly, no.

Judge Stephens: You just understand that they were going to go out of the state?

A. Yes.

Judge Stephens: What was the basis of your understanding that they were to be shipped out of the state?

A. My basis of understanding was on past performance of contracts made with these same people, that they were shipped out of the state.

Judge Stephens: Just because they had purchased raisins before and shipped them out, you assumed that they were going to take the same course?

A. Yes, sir.

Mr. Bowers: We move that his understanding be stricken from the record.

Judge Stephens: Yes. Now, if you will go back to the understanding we had awhile ago——

Mr. Bowers: Was there a ruling?

Judge Beaumont: Judge Stephens was questioning the witness, and a request was made by Mr. Bowers that the understanding should go out. Judge Stephens stated that it should go out.

Mr. Bowers: Does the Court rule that it does go out?

Judge Stephens: My questions were merely foundational.

Judge Beaumont: Then let the answer go out.

Judge Stephens: Let's see if we can't shorten it. Can't [fol. 251] we now say that each side admits that the raisins, which were the subject of these contracts that have just been introduced in evidence, would take the same course that is outlined in the stipulation?

Mr. Aten: We are willing to stipulate to that.

Mr. Bowers: Yes, we are willing to stipulate to that.

Q. Mr. Brown, the question of Muscat layers was left out of this stipulation. Will you state; when layer Muscats are brought into the packing house, how are they handled and what is done in putting them into the containers for shipment to commerce?

A. The layer Muscats are brought in from the vineyard into the packing house in sweatboxes, and simply lifted out of the boxes into the packing box.

Q. That is the complete operation, isn't it?

A. Yes, sir.

Cross-examination:

Q. Mr. Brown, when you made these contracts in May of 1940, that you have testified to here, the various ones that are introduced as exhibits, did you at that time have any raisins on hand to fill the contracts?

A. I had raisins on hand in the spring of 1939. I had other orders on hand calling for the delivery of 1939 crop raisins.

Q. How much raisins did you have on hand at the time these contracts were made, of the 1939 crop?

A. I don't recall the exact amount of raisins I had on hand at that time.

Q. Did you have any idea at that time of the amount of raisins on hand and in the state, of the 1939 crop?

[fol. 252] A. The figure that was given out by the state, as of September 1, 1939, was 70,000 tons of raisins in the hands of the packers.

Q. So that, as a matter of fact, at the time you made these contracts, and at least up until September 1, 1940, there were on hand in the state available some 70,000 tons, which could have been utilized for the purpose of filling the contracts covering 1939 and 1940 raisins, or 1939 or 1940?

Mr. Aynesworth: I object to it as incompetent, irrelevant and immaterial; not bearing upon any issue in the case. The only question is whether or not, after the program went into effect, those were available.

Mr. Bowers: I don't think so. He has been questioned here about the making of contracts in May, calling for future deliveries, and the fact that he has been damaged because he couldn't get raisins to fulfill the contracts. We propose to show that there were plenty of raisins available at that time.

Mr. Aynesworth: I submit that the only matter in controversy is whether or not, from the time the program went into effect, there were available raisins. As to whether they were available prior to that time, or whether he had them available prior to that time, is immaterial.

Judge Beaumont: Objection overruled.

Mr. Aynesworth: Will the Reporter read the question?

Judge Beaumont: Read the question, Mr. Reporter.

(Question read by Reporter.)

A. There were—

Judge Beaumont: Just answer that yes or no. Then you [fol. 253] may explain your answer, Mr. Brown.

A. Yes. There were raisins in the hands of the growers in the early part of the 1939 season. As the season went on those raisins were bought by the Commodity Credit Corporation and larger packers.

By Mr. Bowers:

Q. Mr. Brown, do you know at what time the 1940 crop of raisins came on from the producers?

A. The 1940 crop was exceptionally early and some raisins were delivered in the early part of September.

After the program was announced the growers stiffened in their ideas of price and there was no money here available for them, and they were not inclined to sell.

Q. Do you know approximately what the 1940 crop of raisins was, in tonnage?

A. It was approximately 160,000 tons.

Q. And those were available, in the hands of the producers, from the early part of September on?

A. Under the program only 30 percent of those were available.

Q. Under the program 30 percent of those could be delivered by the growers to the packers, or anybody else that wanted to?

A. You were permitted to deliver them, but there was no money here for 70 percent, and you didn't want to deliver them.

Q. Do you know whether any raisins of the 30 percent were sold by these producers in September 1940?

A. I think there were a few sold, yes, sir.

Q. Were there any sold in October 1940?

A. I think a few were sold, yes, sir.

[fol. 254] Q. Any in November 1940?

A. Yes, sir.

Q. And in December 1940?

A. Yes, sir.

Q. In other words, during all times, from the time that the raisins were ready in the first part of September 1940, sales were being made by the producers?

A. The producers were reluctant to sell, because there wasn't any money here. There was an occasional grower that had to have money, and in a dire attempt to get money there were a few sales made.

Judge Beaumont: Just let the answer go out. Read the question, Mr. Reporter. Please listen to the question, Mr. Brown. Just answer yes or no, and if it is necessary you may explain your answer.

(Question read by Reporter.)

A. No.

By Mr. Bowers:

Q. You say no sales were made by producers?

A. No; referring to "during all times"; raisins were not being sold by producers.

Q. What do you mean by that?

Judge Beaumont: If you will have the question read, Mr. Bowers, you will find that apparently he has made the proper answer, insofar as the witness' viewpoint is concerned. You said "during the time."

Mr. Bowers: I said "during all those times."

Judge Beaumont: He said, "No; all the time sales were not being made."

Mr. Bowers: I want to pin that down, now.

[fol. 255] Judge Beaumont: Well, proceed.

By Mr. Bowers:

Q. When you say that during all of that period, from September on, the sales were not being made by producers, do you mean that no sales were made during September, or any particular period?

A. I mean that at all times the raisins were not being sold and were not available for sale.

Q. Can you tell me any time in September when these raisins were not being sold and were not available for sale?

A. Prior to September 7th there was an on-rush of the growers, who were not favorable to a prorated plan, to sell their raisins, because they could sell them 100 percent. They rushed those into the packing houses. Then there came a lapse, from September 7th until about October 1st, when very few raisins were being sold by the producers.

Q. You say you kept up, during that time, with the raisin conditions, the same as you had prior thereto, did you not?

A. Yes, sir.

Q. Can you tell us now approximately how much of that crop was sold by the producers, prior to September 7th, of the 1940 crop?

A. I estimate about 20,000 tons were sold.

Q. And what amount were sold during the month of September 1940, subsequent to the 7th?

A. Well, that was my answer—subsequent to the 7th?

Q. Yes.

A. You mean following the 7th?

Q. Yes, subsequent to the 7th.

A. I can't give you the amount in exact figures, but [fol. 256] I tried to buy raisins and very few of the growers were inclined to sell. As I stated before, there was

no money here available. The clearness of the program, which they had supposed all the way along, was not clear to them, and they wanted to wait and see what the program was going to be.

Q. Well, you made no effort to obtain any of these 20,000 tons prior to September 7th, in order to fulfill your two-or-three-hundred ton requirement, did you?

A. Prior to that time I was busy harvesting my own crop.

Judge Beaumont: What is the answer; is it yes or no? Read the question, Mr. Reporter.

(Question read by Reporter.)

A. I made some effort; yes, sir.

By Mr. Bowers:

Q. What effort did you make, Mr. Brown?

A. I contacted growers.

Q. Who had raisins?

A. Yes, sir.

Q. Did they have enough to meet your requirements?

A. I expected the growers that I saw had enough raisins, in entirety, to meet my requirements; yes.

Q. Wouldn't they sell to you?

A. They didn't sell to me.

Q. Did they refuse to sell to you at any price, or was it because they refused to sell to you at the price you offered?

A. Announcement had been made about August 30th that we would have a program, and many of the growers wanted to wait and see what the program was.

Q. During that period, prior to September 7th, what was [fol. 257] the market price, the sweatbox price?

A. For 100 percent?

Q. For raisins; yes.

A. For 100 percent of raisins the sweatbox price was \$47 and \$48 per ton, for the 100 percent.

Q. And did you offer the growers \$47 and \$48 a ton for their raisins?

A. I tried to buy some raisins at \$45 per ton.

Q. In other words, the market price at that time was \$47 to \$48 a ton, and the reason you couldn't get raisins was because you wouldn't pay more than \$45 a ton?

A. No, sir; that is not entirely it. I talked to the growers and they said that they wanted to wait and see whether we

were going to have a program for sure. And Mr. Parker had assured us that if there was any objection to a program, even in a minority, that there wouldn't be any program. And the objection was borne out by the fact that of 3,000 voters in this program, 600 voted for it and 2400 voted against it.

Mr. Bowers: We move to strike that out as not responsive to the question.

Judge Beaumont: Motion denied. It is an explanation to the answer.

By Mr. Bowers:

Q. Mr. Brown, at least during the period prior to September 7, 1940, there were growers who sold 20,000 tons, you state?

A. That is my estimate; yes, sir.

Q. Did you talk to any of the growers who sold any of these raisins?

A. I have talked to those growers; yes, sir.

[fol. 258] Q. At that time?

A. Perhaps I talked to some of them at the time.

Q. Did you attempt to buy any raisins from any of these growers?

A. I said a few moments ago that I did attempt to buy them.

Q. In other words, you attempted to buy raisins from the same growers who sold their raisins at that time?

A. I attempted to buy raisins from growers.

Q. Well, did you attempt to buy raisins from any of these growers who actually sold their raisins during that period?

A. I believe that I did.

Q. Well, you believe that you did. Did you?

A. I believe that I did; yes, sir.

Q. But you didn't offer more than \$45 a ton to any of these growers?

A. Not at that time.

By Mr. Bowers:

Q. Now, Mr. Brown, did you attempt to make any purchases in September, after September 7th, of raisins?

A. Yes.

Q. Were you able to obtain any?

A. Yes.

Q. How much did you obtain then?

A. I bought, I believe, three crops during the month of September.

Q. You bought what?

A. Three crops.

Q. Can you give that to us in tonnage? Three crops [fol. 259] doesn't mean anything.

A. About 75 or 80 tons.

Q. About 75 or 80 tons?

A. Yes.

Q. Were you able to buy any more during that period?

A. Absolutely not.

Q. What was the market sweatbox price during that period?

A. \$55, under the program.

Q. What did you offer?

A. \$50 for 100 percent.

Q. You made no higher offer than that?

A. I did not.

Q. During the month of October 1940 do you know approximately how many tons of free tonnage raisins were sold by producers?

A. In the early part of the month of October comparatively little of the 30 percent was sold by producers.

Q. Can you just answer the question as to approximately how many tons?

A. I can't tell you.

Q. You have no idea at all?

A. I have an idea, because I contacted the growers and they were selling very, very reluctantly.

Q. Would you say that there were more or less sold in October than there were in September?

A. I would say in the early part of October that—the first half of October, that perhaps about as many as were sold during the month of September, from the 7th on.

Q. In the last half of October how many?

[fol. 260] A. The newspaper publicity was such that the growers realized that—

Q. Just a moment, Mr. Brown—

Judge Beaumont: Just answer the question.

By Mr. Bowers:

Q. Without giving us a lecture, can you answer the question?

A. May I have the question?

(Question read by reporter.)

A. I can't give you the number of tons.

Q. Was it more or less than the first half?

A. More.

Q. Did you endeavor to get any of those raisins?

A. Yes, sir.

Q. What was the market sweatbox price during October?

A. The sweatbox price, under the program, continued at about \$55 a ton, and an occasional offer at \$57.50 per ton was offered.

Q. Did you make any effort to get any of those raisins?

A. I bought some raisins in October; yes, sir.

Q. Did you make any effort to get any of these raisins that were being placed on the market, by these producers, at \$55 or \$56 per ton?

A. I made an effort and bought some raisins during the month of October.

[fol. 261] Q. Did you purchase any during October?

A. I purchased one crop during the first half of October.

A. The last half of October I had a restraining order placed against me by the Prorate Zone and couldn't buy any raisins during that period.

By Mr. Bowers:

Q. How many tons did you purchase in October?

A. I purchased about 40 tons during the first half of October.

Q. How many tons of raisins of the 1940 crop did you purchase altogether, Mr. Brown?

Mr. Aten: I object to that as incompetent, irrelevant and immaterial; not relevant to the issues, as to any raisins purchased after the time of the filing of this action, about the middle of October, for reasons already stated.

Judge Beaumont: Objection overruled.

A. I purchased about 700 tons of raisins.

By Mr. Bowers:

Q. Of the 1940 crop?

A. Yes, sir.

Q. In addition to the 200 tons which you produced yourself?

A. Yes, sir.

Q. Did you fulfill these contracts, then? Did you deliver these raisins under the terms of these contracts?

A. No.

Mr. Bowers: Mr. Brown you stated that you anticipated doing a business of some 3,000 tons during 1940 season?

A. Yes, sir.

Q. Had you at any time previous done business of that amount, during a current season?

[fol. 262] A. No. I would like to explain it in this way: That I just started in the packing business for myself during the early part of 1939 and sold 2,000 tons, and anticipated that I could sell 3,000 tons during the 1940 crop season.

Q. In other words, your basis was the fact that during the 1939 season you had done a business of 2,000 tons, and so you were hopeful that you would increase your business by 50 per cent the following season?

A. I felt that I could sell 3,000 tons during the 1940 crop season.

Q. You say it was customary among the packers to contract in the early part of the year for deliveries in the fall of the year?

A. Yes, sir.

Q. Was that done on the basis that the deliveries would be made right after the fall crop had come in and was ready?

A. Yes.

Q. And you anticipated that the producers, having their crops all on their hands at that time and needing money, that you would be able to purchase the raisins at a fairly reasonably low price and fulfill the contracts?

A. Yes, with this explanation: That a great many of the growers sell their crops early. There are a portion of the growers that hold their crops. Perhaps 35 per cent of the growers hold their crops, which acts as a stabilizing feature, in my opinion, better than any program that we might have

that carries these raisins on into the new year, waiting for an advance in price.

Q. Then you would say, from your connection with the industry and with the growing of raisins, the great bulk of [fol. 263] the raisin growers were forced to dispose of their crop, just as soon as it was ready, in order to get money for financing?

A. A great many of the growers, perhaps two-thirds of them, sold their crops early. I don't believe they were forced to sell them early.

Q. In other words, you are not familiar enough with the industry to know the situation among the growers in that respect?

A. I feel I am familiar enough with the situation, after being in the business for 25 years, to say that two-thirds of the growers sold their crop of raisins before the turn of the year, leaving a third of the growers holding their crop, to act as a stabilizing factor, through the crop season.

Q. And they primarily dumped them on the market in that period because of the fact that they were pressed for money, didn't they?

A. I believe that all growers sell their crops because they need money to pay for taxes and other bills pertaining to the harvesting and so forth.

Q. And so it is the practice among the packers, as you state, upon that basis to make these contracts for future deliveries?

A. It was common practice for the packers to make early contracts for deliveries in the fall.

Judge Beaumont: Is it your purpose to pursue that particular phase of the testimony any further, Mr. Bowers?

Mr. Bowers: No, not particularly on that.

Q. You knew, at the time that you made these contracts, that a raisin program was in existence; that a seasonal program had been operated in 1938, didn't you?

[fol. 264] A. I knew that a program had been operated in the season of 1938, because I had delivered to that program and I had not received my money for 20 per cent of my raisins.

Q. Did you know at that time whether or not there was any discussion or movement for the adoption of a seasonal program for 1940?

Mr. Aynesworth: I object to that on the ground that it is incompetent, irrelevant and immaterial; not responsive to any issue, whether he knew it or didn't know it.

Judge Beaumont: It appears to me that it is immaterial, Mr. Bowers. Quite frequently the court doesn't know what a cross examiner has in mind.

Mr. Bowers: I have no objection to disclosing it to your Honor. I think the situation is apparent that Mr. Brown sold short on the market, on the gamble that there would be no prorate program and there would be a bunch of raisins dumped on the market that he could pick up cheap. That is the sole purpose of it.

Judge Beaumont: Objection sustained.

By Mr. Bowers:

Q. You stated that you would have to pay \$1.50 a ton for all the raisins you purchased, in excess of other costs, under the program?

A. I stated that owing to the small supply of raisins available that the buying cost was increased \$1.50 per ton in the purchasing of raisins.

Q. What do you mean by "buying cost"? What particular buying cost?

A. The actual cost of buying these raisins. The supply was short. The growers were not inclined to sell. We had watchmen that were circling our place day and night in an [fol. 265] attempt to intimidate both us and what growers we could do business with, and it required the extra cost of \$1.50 per ton.

Q. Were you paying for those watchers, or whatever they were?

A. No, I wasn't paying for them directly.

Q. Then, how did they cost you \$1.50 a ton extra?

A. Because the growers were intimidated by the fact that these men were, up until the middle of October, sitting in our yard watching every operation that we made and that they made in disposing of the raisins.

Q. So you felt you paid them \$1.50 a ton more to assuage their feelings, because they had to come into your yard and there was somebody sitting there watching them?

Judge Beaumont: That is only argumentative, Mr. Bowers.

Mr. Bowers: I agree with the court.

Q. Did you pay any of these growers \$1.50 a ton more?

A. We paid some more for their raisins on that basis, and then we—

Q. May I ask you to explain? You say you paid more on that basis. On what basis do you mean?

A. If the grower was not inclined to sell, due to those circumstances, we paid him more in an attempt to get the raisins; and then we had to make telephone calls and trips back to the various growers in an attempt to buy their crops, which all added to the cost of buying.

Q. Those crops that you were attempting to buy, you mean that your purchases were attempted to be made contrary to the provisions of the program?

A. Yes, sir.

[fol. 266] Q. And that was the reason of this extra trouble and of the so-called intimidation?

A. Well, these watchmen were there. That caused the direct intimidation.

Q. As a matter of fact, did you make any attempt at all to buy the certificated free tonnage raisins from the producers that had them?

A. Not at that time.

Q. Did you at any time?

A. I attempted to buy raisins, but not under the program.

Q. In other words, Mr. Brown, your difficulty was in getting hold of raisins that were not under the program?

A. I was offering to buy raisins 100 per cent.

Q. When you say "100 per cent" you mean by that that your offer was conditioned upon the grower delivering to you his entire crop of raisins, contrary to the provisions of the program, which required 70 per cent to be delivered to the pools?

A. Yes, sir.

Further Cross-examination.

By Mr. Walton:

Q. Mr. Bowers asked you at one time this morning how many 1939 crop raisins you had on hand during or about the month of May, 1940. I believe you said you didn't know. Is that your answer?

A. I believe that was my answer, yes.

Q. That is your answer now?

A. Yes.

Q. Have you any idea?

A. I am a small factor in the raisin business and my [fol. 267] finances are limited, and I had bought all the raisins that my finances would afford.

Judge Beaumont: Let the answer go out. Read the question, please, Mr. Reporter.

(Question read by reporter.)

Judge Beaumont: Just answer it yes or no, Mr. Brown, then if necessary you may explain your answer.

A. Yes, I have an idea.

By Mr. Walton:

Q. Could you approximate the amount?

A. I believe so.

Q. Will you do so, please?

A. I believe 100 tons.

Q. As I understand you, then, at that time, in May, you sold these contracts under which you obligated yourself to deliver at \$60 a ton; that is true, isn't it?

A. Yes.

Q. That was your testimony this morning?

A. Yes, sir.

Q. I understood you to say, or I will ask you if it isn't a fact that at that time 1940 crop raisins were available in the field at \$45 a ton?

A. Yes, sir.

Q. You didn't avail yourself of that? You didn't buy any on contract at that time to cover these sales that you had made?

A. Yes; I bought all the raisins that my finances would afford. I was a small operator and, naturally, didn't have large capital, like some of the large packers. So I bought all my finances would afford.

Q. How much was that; towards covering these contracts, [fol. 268] I mean?

A. Just as I have estimated; about a hundred tons.

Q. When did you make that estimate?

A. Just a few moments ago, in answer to your question.

Q. My question was with respect to 1939 crop raisins that you had carried over.

Judge Beaumont: And had on hand about the month of May, 1940.

Mr. Walton: Yes.

Q. Didn't you understand it that way?

A. I understood you asked me how many raisins I had in May, of the 1939 crop.

Q. Yes.

A. I estimated that at a hundred tons.

Q. Yes. Now, I have left that subject. I am asking you now how many raisins, if any, you bought of the 1940 crop at the field price of \$45, to cover your sales at \$60?

A. I didn't buy any, because I had my own crop coming on and at that time there was no talk of a program. And even as it later developed, with a program, I wouldn't have been able to use those raisins. The grower's contract would have been voided under the 1940 crop program.

Q. Well, of course, you didn't know that in May?

A. No, sir.

Q. Then your answer is, I believe, that you did not buy to cover those sales at \$60; that is correct, isn't it?

A. Yes. 1940 crop?

Q. Yes.

A. Yes.

Q. You spoke of the operation with respect to Muscat [fol. 269] layers, and as I have your testimony you stated that Muscat layers are simply lifted out of the box, in which they are delivered, into another or packing box. Is that the complete operation?

A. Yes, sir.

Q. Nothing else is done to them?

A. No, sir.

Q. How long have you been a processor yourself?

A. I am not a processor. I am a grower-packer.

Q. You are not a processor of raisins?

A. I am a grower-packer.

Q. Are you a processor of raisins?

A. I don't process raisins.

By Mr. Walton:

Q. With regard to what is done with Muscat layers, during the time you have operated under this Processor's License have you handled Muscat layers?

A. No, sir.

Q. You base your statement and your testimony in that respect, then, on your 25 years' experience in connection with the raisin industry?

A. Yes, sir.

Q. And there is nothing done to Muscat layers except to change them from one box to another; is that correct?

A. That is correct.

Q. And that is a universal custom?

A. It is a custom based on my experience, yes, sir.

Q. You have a comprehensive experience, over the last 25 years, on all of the methods of handling Muscat layers, haven't you?

A. I have been identified with firms that handle Muscat [fol. 270] layers in large quantities.

Q. Do you make the positive statement that they are not handled other than as you have indicated, or simply that you don't know?

A. Well, I do know as to the majority of the handling of layers. You ask about a universal custom. The custom, so far as I know, is that all that is done to those layers is that they are hauled in from the vineyard and they are taken out of the box and put into a packing box.

Q. And that is the complete operation, as you stated this morning?

A. Regarding layer Muscats.

Q. Yes. And that is the universal custom of all the packers of Muscat layers; is that correct?

A. Yes, sir.

Redirect examination.

By Mr. Aten:

Q. Mr. Brown, going back to the inquiry made by Mr. W. [unclear] as to the 100 tons of raisins you had on hand in May of last year, he asked you, in that connection, if you went out and purchased other raisins of the 1939 crop to cover these contracts, and you answered, "No". What did you do with the 100 tons that you had on hand in May?

A. I filled orders that I had for those raisins.

Q. Did you, from May until the program went into effect, continue to buy and sell raisins of the 1939 crop?

A. Yes, sir.

Q. How many raisins of the 1939 crop would you have on hand at any definite time during that period?

A. 100 to 200 tons.

Q. And did you state why you didn't buy to fill these [fol. 271] orders in October? Why didn't you buy to fill these orders in October, November and December, under the contracts that have been introduced here?

A. Because my finances were used in the buying and selling of these current orders.

Q. And you kept a continuous business going, but you never had more than 200 tons at any one time; is that correct?

A. That is correct.

Q. Going back to the question concerning the 70,000 tons held over, that you say was on hand in August, or September 1st, that is, the holdover of the 1939 crop, I believe you stated that by September 1st that holdover had been purchased and was in the hands of the packers; is that correct?

A. Yes, sir.

Q. You stated in that connection that it has been the custom and is the custom for packers to buy one from the other. Now, why didn't you buy some of those raisins in the hands of the packers to fill these contracts that would take 1939 raisins? Why didn't you buy from that source?

A. I tried to buy from that source. The packers wouldn't sell the raisins in sweatboxes.

Q. They would sell them only as a packed raisin?

A. Yes, sir.

Q. And at what price?

A. 4 cents a pound.

Q. Then, there was no object in buying?

A. No, sir.

Q. That is, you wouldn't diminish or cut down the loss any by doing so?

[fol. 272] A. No, sir.

Q. What happened to the sweatbox price of the 1939 crop at the time the program of 1940 went into effect on September 7, if anything?

A. The sweatbox price stiffened and jumped to the field price of the 1940 crop.

Q. That was \$55?

A. \$55 a ton.

Q. So you would have had to pay the same price, as you would have had to pay under the program, for sweatbox raisins?

A. Yes, sir.

Q. You testified this morning, in your direct examination, that if you had operated under the program—not as you actually did operate—that if you had operated under the program the additional cost of buying, under the program, was \$1.50 a ton. Would that have been as to you and as to all other packers?

A. The cost of buying, to all packers, was increased.

By Mr. Aten:

Q. Then, it wasn't because of the watchers and those matters out around your place that increased that cost, was it? That is, it was an increase to all packers, wasn't it?

A. Yes.

Q. Can you explain why that was?

A. There was only 30 per cent of the total crop to buy. As to the other packers, they were having just as hard a time buying and as much trouble buying their raisins and that, of course, increased the price of buying.

Q. Is this or is it not a fact: Did they not have to purchase [fol. 273] 100 tons in order to get 30?

A. Yes, sir.

Q. And the buyers were paid on that basis, were they not?

A. Yes.

Judge Yankwich: I think it should be stated for the record that every member of the court read, before going on the bench, the statement of facts which gives the operation of the pool and the method of buying and selling. And regardless of what this or any other witness may say, the agreed facts show the method of operation.

Mr. Aten: The plaintiff rests.

WALTER K. HINES, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Walter K. Hines.

Direct examination.

By Mr. Walton:

Q. Where do you live?

A. Fresno.

Q. What is your business or occupation?

A. Sales department, Sun Maid Raisin Growers.

Q. What is the Sun Maid Raisin Growers?

A. A cooperative.

Q. A cooperative. For what purpose was it organized? What is its business?

A. For the handling and receiving growers' raisins, and selling.

Q. The cooperative receives—

A. Processes and ships and sells.

[fol. 274] Q. —and sells raisins? How long have you been connected with that organization?

A. 22 years.

Q. What was your first connection with them?

A. Shipping clerk in the Dinuba Plant.

Q. What was your next situation or position with Sun Maid?

A. Superintendent of the plant at Cutler.

Q. Superintendent of a plant at Cutler. By "plant" what do you mean?

A. A raisin packing plant.

Q. What was your next connection with Sun Maid?

A. I was transferred into the main office at Fresno.

Q. What were your duties in that connection?

A. At the time, supervisor of the plant account.

Q. Of the plant account?

A. Of the plant account.

Q. About how long did you stay in that position?

A. Until 1926.

Q. What was your next position with Sun Maid?

A. I was transferred to the operating division that had charge of all manufacturing plants.

Q. Of all manufacturing plants. By the way, Mr. Hines, how many of those plants are there?

A. Now we have—I will have to count them in my mind.

Q. All right.

A. Seven, at the time.

Q. You have seven?

A. Right now at present.

Q. You have seven in operation?

[fol. 275] A. At the present.

Q. Are there any other plants or factories which the Sun Maid owns but which are not now presently operating?

A. There are.

Q. How many others are there?

A. I think about seven. I am not sure of that.

Q. About seven more?

A. I am not sure of that. Yes.

Q. What was your next connection with Sun Maid?

A. I was made operating manager.

Q. I mean after that.

A. I was transferred to the sales division.

Q. Are you now in the sales division?

A. I am.

Q. How long have you been there?

A. Since 1935.

Q. What position do you hold in the sales division?

A. Assistant sales manager in charge of products administration; that is, inspection of the fruit and like of that; finished products.

Mr. Walton: If the court please, I have placed on the blackboard a chart which I would like to now have marked Defendants' Exhibit 1 for identification.

Judge Beaumont: Let it be marked Defendants' Exhibit A for identification.

Mr. Walton: Exhibit A.

Q. Now, Mr. Hines, I will ask you to explain what this chart is and what it shows.

A. That chart there is drawn up and shows the mechanical procedure in processing raisins.

[fol. 276] Q. And by raisins—

A. The Thompson Seedless raisins.

Q. That Thompson Seedless is a natural seedless raisin?

A. Natural seedless raisins.

Q. Natural seedless raisins.

A. As they are delivered by the producer.

By Mr. Walton:

Q. Mr. Hines, just briefly explain this diagram; tell what they do to these raisins and point out the different processes—

Judge Stephens: No; the different things they do.

By Mr. Walton:

Q. The different things they do. First, what is this?

A. The first picture here in the diagram is a truck, a vehicle for delivering the unstemmed natural raisins to the plant that is to handle them.

Q. That is at the upper left-hand corner of the exhibit?

A. The upper left-hand corner. Next in our process, a sample is taken from the load. That is to be typical of the contents of the entire load. That is tested over a sand machine that sifts out the loose sand that is contained in the unstemmed raisins. That is for the purpose of arriving at the approximate percentage of sand that is included in a load, so that it can be deducted from the grower's weight. Next, the sample is taken and put through a stemmer. The stemmer has the operation of separating the dry, brittle stem from the raisin as it is delivered to us from the grower. A small sample is put through this machine which, through the action of air, separates the stem from the raisin after they have been broken apart by a cylinder in a concave screen.

[fol. 277] Judge Stephens: Are you now taking a sample from the truck; taking it clear through?

A. The sample has been taken from the truck.

Judge Stephens: The same sample?

A. Yes. And after having broken the dry, brittle stems from the raisins, the raisins are elevated up to a shower. The stems and raisins are commingled. They are put into a pan that shakes them and simultaneously carries them forward where they drop over the end of a shower, you might say, like a thick water stream. They are subjected to a blast of air from underneath, which is set so it will toss out the stems, which are lighter than the raisins, and the raisins fall down.

By Mr. Walton:

Q. In response to Judge Stephens' question as to the raisins in this waste tester; that was just a sample?

A. I am still talking about the sample.

Judge Stephens: What I want to get, is it the same raisin that keeps going?

A. It is the same load.

Judge Beaumont: It is the same batch of raisins you put in for the purpose of the test?

A. Yes. Those raisins that are carried over, they are

caught into a container which is later weighed to determine the quality of the delivery. The stems have been blown away—separated. Next, in case there is—

Judge Stephens: What is significant of the title "sugar tester"?

A. That is based on the theory of weight per volume. The more sugar there is the more they will weigh in this [fol. 278] container when measured full.

Judge Stephens: And that designation is under the machine you have been talking about?

A. The sugar tester, yes.

Judge Stephens: I am doing this for the record.

A. Next, the raisin is tested for the moisture content. They are then subjected to a pressure system which indicates, relatively, the moisture content of the raisins. That is on the theory that if a raisin contains more than 17 per cent moisture it won't keep properly in storage, in the raw form, until it is processed or until it is manufactured. Next, they are then taken—when ready to be manufactured and packed the raw raisin is taken from this load here, from which the sample was taken, and put through what we call a stemming operation. This operation here performs the same function on the total delivery that was performed here on the sugar tester. It goes through a concave cylinder screen that separates the stems that is carried to the top, and next are separated by wind, which is directed through here, and tosses the light stems, and any light and immature raisins in that load, over and out into what we call waste. The raisins themselves then drop down and are graded as to size and are put through a cap stemmer. This is called a capper and recleaner. The usual term is "stemmer." After they have been cap stemmed they go over a grader, in the case of Thompson Seedless, where there are three grades manufactured, and are graded as to size by a screen containing perforated holes of a certain diameter, so that the top or larger grade go into a carton pack, or a Fancy grade as we call it. The second grade on the second table is extracted for the bulk [fol. 279] or the choice grade. The small raisin that is carried through both the top screens onto the bottom screens are called the midgets or the bakers. So all Thompson raisins, after having had the stems and dirt removed, they are divided into three sizes. Next, after routine inspection, they are washed sufficiently to remove any rocks that might

be contained in the delivery or any sand that might adhere to the raisins, or any other foreign material that might have been in the delivery when originally made to us by the grower. From the washer they go into a drier, which throws out the surface moisture obtained in going through the washing operation. Next they go over a shaker and recleaner where any small cap stems, which were taken off there and carried on through, are taken out, or any flat raisins that go through the screens. Next, of course, samples are taken, where they go into the laboratory to determine whether they are fit for the particular pack in which they are going, and from there the fancy raisins are packed by automatic packaging equipment and the bulk raisins go out into 25 or 50-pound boxes or bags or 2 or 4-pound paper bags.

Judge Stephens: What is the man with a spy glass?

A. He is looking over the discolored ones, to keep track of the quantity that may not be readily obvious to the eye as they go through in good volume; then, too, he looks for chipped (?) raisins. In going through the operation here, it may be the force of the equipment hitting the raisin to knock the cap stem off, it may bruise it, in which case they readily sugar. He takes that out here in the laboratory.

[fol. 280] Judge Stephens: The whole crop of raisins go through the moisture tester?

A. Only the samples that are taken.

Judge Stephens: That is what I want to know.

A. He checks the sample here.

Judge Stephens: Suppose he finds some that contain too much moisture?

A. In our case we embargo the fruit that has been packed during that particular time. I mean we hold up and re-examine it and repack it.

Judge Stephens: I see.

A. We have a crew of inspectors who go around to the different machines to check on the efficiency of the weighing of the automatic equipment and to see that the cartons and like of that are properly sealed and properly printed and in shape as we would have them go to the consumer, or the manufacturer in case of bulk. Then they pass on through the automatic sealing machine here. Then from there they are delivered to the cars for shipment, or truck.

Judge Stephens: I would like to ask about the time that is consumed in this process. Is there a necessity for a

rest period between all the processes, or is it done hurriedly?

A. In our case, there at Sun Maid, the bulk raisins, the 25-pound raisins, are carried through all of the equipment in approximately, say, eight minutes. In the case of cartons, possibly ten minutes from the time they leave the car in the raw state until they come out in the finished form for shipping in the car or truck.

[fol. 281] Judge Stephens: I don't understand. From the time they are taken off the truck they are packed in eight minutes?

A. In the case of 25-pound bags, yes, sir. From the time they are dropped into the stemmer until they come out in the shipping car, in the case of 25-pound cases.

Judge Stephens: You go out some place with a truck. Start from there.

A. The period I speak of—our growers deliver them to our plant.

Judge Stephens: From the time they enter your plant yard, or begin to unload from the truck, until the time they are packed is eight minutes?

A. From the time they are dumped from the truck until it hits the car, in the case of 25-pound bulk, is eight minutes.

Judge Stephens: They are not held in the warehouse for any length of time?

A. When deliveries are more than we are packing on any given date, the overflow goes back in the yard for later packing.

Judge Stephens: But in the ordinary method they are taken directly from the truck and put through the process?

A. They are taken directly from the truck, so far as is possible at the time. We do that as a matter of economy. The deliveries of raisins usually come in from the middle of September along through December, and that is what we use through the entire year.

Judge Stephens: Is there habitually a storage of the raisin after it is carted from the vineyard until you begin [fol. 282] your processing?

A. It works both ways.

Judge Stephens: Pardon me. What I mean by "processing" now is not the definition of that word, but what you have just been relating.

A. In so far as it is possible it moves, in practice, directly

through the flow line upon receipt from the grower. But if there is more delivered at a given time than the plant will take, that quantity is sent back for later use.

Judge Stephens: But ordinarily do you keep up with your deliveries in your processing?

A. No; we can't do that. We wouldn't do that, anyway, on account of setting back fruit that we use later on in our year. The growers deliver, over a period of three or four months, a quantity needed by us to pack over a 12-months' period.

Judge Stephens: What I am trying to get at, is there a storage period of the raisin in the rough before you refine it?

A. Not necessarily.

Judge Stephens: But is there actually?

A. In actual practice there are raisins set back in the raw form for later use.

Judge Stephens: You may hold them for several months—

A. Oh, yes.

Judge Stephens: After they come in on the truck, before you do a thing to them?

A. We do, and for this reason: In making the deliveries during a period outside of our regular receiving period, say, from the middle of June until September—we deliver [fol. 283] in June, July and August—we would want to deliver raisins that had been delivered in their raw form up to that time, because they keep better in that form.

Judge Stephens: You only refine your raisins into a marketable condition as the market indicates it will take care of them?

A. If we are able to do that, yes.

Judge Stephens: That is your rule?

A. That is the rule.

Judge Stephens: Thank you.

• By Mr. Walton:

Q. Amplifying that a little, you always have a reserve supply, do you?

A. We do.

Q. Is that true of all of the larger packers?

A. It is.

Q. Mr. Hines, I will ask this question: You have ex-

plained this procedure as done at Sun Maid, and I am expecting, of course, you will answer that that is the best process, but leave that point out. Substantially, is this the practice of the other packers?

A. In so far as the check on the raisins, generally speaking, yes. Although, as you say, we have equipment there that is not used by other packers or processors.

Mr. Walton: I now offer this in evidence as our exhibit next in order.

Judge Stephens: As illustrative of the testimony given?

Mr. Walton: Yes.

Judge Beaumont: It may be received for that purpose and marked Defendants' Exhibit A.

Mr. Walton: We have another chart here showing Mus- [fol. 284] cats. I think we can probably dispense with that.

Q. Is there any other important process relative to Muscats? Do you do anything additional to Muscats?

A. Yes. We artificially dry them and seed them. Whereas, we do not seed the Seedless raisin.

Q. In other words, there are two more steps?

A. Two more steps.

Judge Yankwich: These are sun dried at the time you get them?

A. Yes, sir.

Mr. Walton: If the court please, I have two more exhibits illustrative of the testimony. I was going to ask the witness to explain this.

(Discussion.)

Mr. Walton: If the court please, we desire next to present for identification a box, and I will ask that the witness, Mr. Hines, explain the meaning of the various sections of that box.

Judge Beaumont: Let it be marked for identification Defendants' Exhibit B.

A. Here is an exhibit that gives you, in approximate form, the grading of an unstemmed quantity of Thompson Seedless raisins. In the first compartment there you have a sample of the natural unstemmed Thompson Seedless with the stems and cap stems attached or commingled, and these raisins are raisins as they are delivered to us by the grower.

Judge Beaumont: That is in the compartment marked "Seedless from Grower."

A. Yes, sir. Next we have different types of waste that [fol. 285] is separated from this quantity of unstemmed Thompson raisins. Here in this compartment is chaff and sand. Here is cap stems. The next is stems, the larger stems.

Judge Beaumont: The first one says, "Seedless waste sand." The next one is "Seedless waste caps," and the next is "Seedless waste stems."

A. Yes.

Judge Yankwich: I was going to say "here and there" doesn't mean anything in the record. I would suggest you identify it.

Judge Beaumont: Well, he has done that.

A. Then, here represents the grading out of that unstemmed quantity there, when passed over the grader.

Judge Beaumont: When you say "here"—

A. This compartment.

Judge Beaumont: How is it labeled?

A. "Fancy Seedless", and the next compartment is "Choice Seedless", and the third one is the "Bakers Seedless." In other words, that is the disposition in size after having removed the waste shown in these compartments here, of the typical unstemmed quantity of natural Thompson raisins. These cartons here are representative of a particular grade. That is, the Fancy grade of Seedless. This is the way they go to the trade. The Choice grade and the Bakers are packed separately into 25-pound or 50-pound shipping containers, or into other consumer units, such as a 1-pound carton, or 2-pound bag, or 4-pound bag; whatever pack happens to be adopted.

Judge Stephens: I notice the raisin in its finished form seems to be brighter or fuller than the ones in the compartment [fol. 286] ment marked "Seedless from Grower". I want to ask whether or not there is any moisture added or subtracted?

A. There is very little moisture, if any, added in the washing process, because they are immediately put through a centrifugal machine that takes off the moisture that might be put on the surface as it passes through. But these are more uniform in size. When they pass through that blast of air it takes out any of the light, immature raisins.

Judge Stephens: There is no intention of increasing the moisture content in the processing?

A. Not at all.

Judge Beaumont: And the fact that they look a little brighter here is because in this process they are cleaned?

A. They are cleaned and washed.

Judge Beaumont: And it removes the sand and the little dust that may be on them, when they are washed, and it makes them look a little brighter?

A. Yes.

By Mr. Walton:

Q. I notice two packages of the finished product. State the designation and state briefly the difference between the two.

A. The carton packs?

Q. Yes.

A. One is a natural seedless raisin, and the other is a seedless raisin which has been made into what we term the Nectar Seedless raisin, which has been given a heat treatment and oil treatment—covered with oil.

Judge Yankwich: What is the object?

A. We believe it is a better pack. It keeps longer, stays fresh longer and retains the natural taste for a greater [fol 287] length of time, and is a deterrent to infestation.

Judge Stephens: Is that what you call the Seedless Nectar, in one of those packages?

A. Yes.

Judge Stephens: Is that generally accepted as a marketable product?

A. It is; but it is supposed to be confined and is an exclusive pack of Sun Maid.

By Mr. Walton:

Q. And I understood you to say two additional things are done to that package?

A. To the Nectar.

Q. Yes.

Mr. Walton: We offer the box, the container, in evidence as Defendants' Exhibit next in order.

Q. Mr. Hines, in the sample that is here, and which has

been examined and about which you have testified, you have shown certain quantities of stems and sand and so forth. Now, taking a batch of raisins of that size, do those quantities run true?

A. Approximately true.

Q. Will you state the percentage of this material that is removed?

A. Cap stems, dirt and stems represent up to about 6 per cent of the total weight. Midgets will grade out anywhere from 7 to 10 per cent over the standard 19/64 screen that is used at present. The bulk will run around 47 per cent, and possibly 40 per cent for the Fancy grade. They, of course, vary with individual lots, but that is about our experience with this year's crop.

Judge Stephens: Are those grades standard or confined [fol. 288] to you?

A. These grades are standard by the Dried Fruit Association.

Judge Beaumont: I believe you have offered this box?

Mr. Walton: Yes, we have offered it in evidence.

Judge Beaumont: It may be received and marked Defendants' Exhibit B.

Mr. Walton: If the court please, we next offer for identification a sample of Muscats similar to the one just introduced in evidence, and ask Mr. Hines to briefly explain that to the court.

A. This exhibit here is arranged in about the same fashion as the one for the Seedless raisins.

Judge Beaumont: Mr. Hines, wouldn't that be the same? That would be illustrative of the same matters, except that in so far as Muscats are concerned there are the two additional processes that you referred to?

A. Exactly, and an additional grade in the graded raisins here, the procedure is just about the same.

Judge Yankwich: Won't you identify the compartments?

A. The first compartment is the unstemmed natural Muscats. The next is "Muscat waste sand", then "Muscat waste caps", and "Muscat waste stems". The next is "Muscat waste seeds". The next is "Muscat 4 Crown"—

Judge Yankwich: What is that?

A. That is the large size of the Muscat raisin. The next is "Muscat 3 Crown", then "Muscat 2 Crown", and "Muscat 1 Crown".

Judge Yankwich: Those grades have reference to size?

A. Yes.

[fol. 289] Judge Yankwich: Or quality?

A. Size. Then next you have a carton of old style seeded Muscats, and next is "Puffed Seeded Muscats".

Judge Stephens: Will you describe what "Puffed" means?

A. Puffed is a trade name that is used for the fancy grade of Muscat raisins which have been given a special heating and cooling oil treatment.

Judge Yankwich: Does it have the same effect on raisins that it has on rice and those other products they sell us, puffed wheat and puffed rice?

A. It doesn't puff it as much.

By Mr. Walton:

Q. In the designation there you are reading from right to left of the exhibit?

A. I was reading from right to left.

Judge Yankwich: Those compartments are identified by the labels, so there ought to be no difficulty in reading that into the record.

Judge Beaumont: Do you desire to offer this for the same purpose?

Mr. Walton: Yes, we offer that. And it has been suggested that these exhibits should be photographed.

Judge Beaumont: You may do that, if you desire. Let it be received in evidence and marked Defendants' Exhibit C.

By Mr. Walton:

Q. Mr. Hines, with reference to what has been called Muscat layers, what do you mean by Muscat layers, and how do they differ from the other Muscat raisins that you have testified about?

A. Muscat layers—the description of that indicates an unstemmed delivery of Muscat raisins which are received and packed in unstemmed form, in clusters.

[fol. 290] Q. Will you state what, in the ordinary routine, is done with those raisins from the time they are received until they are out of the hands of the handler?

A. Layers are received and graded. The inspection is

by eye by trained inspectors. They are received and then, when ready to pack, they are placed in a steam room for the purpose of softening up the stems, which is necessary in order to pack them without the grapes or the raisins becoming detached from the cluster stems. In most cases it is necessary to treat them with a blower, a blast of air, in order to blow off the loose dirt, and the like of that, that gets on them in the vineyards. After they are packed they are fumigated in order to eliminate or kill any infestation or bugs of that sort.

Judge Stephens: Is there a fumigation of the other raisins you have told us about?

A. They are fumigated, except in case of the Nectars and Puffs, and the heat treatment they receive there—

Judge Stephens: I mean the Thompson?

A. The Thompson; yes, sir.

Judge Stephens: They are fumigated?

A. Yes, sir.

Judge Stephens: In all cases?

A. In the case of 25-pound bulk raisins, they are fumigated in the flow line as they are packed into the 25-pound boxes. In the case of consumers' packages, they are put into a chamber or a car and fumigated after having been packed.

Judge Yankwich: The box, too?

A. The box, too.

[fol. 291] Judge Yankwich: I understand they have got it down to a science now so that they can put a bug in the middle of a carload and show that the bug has been killed by the fumigation?

A. That is correct.

Judge Stephens: Is that a chemical or gas?

A. There are different agencies used. In the chamber fumigation they use ethylene oxide—usually they use ethylene oxide. Then there is another one; it is the one that is in universal use at the moment. The name of it has just slipped my mind.

Judge Stephens: The fumigation is quite important, is it not?

A. Yes. In the case of fumigating in the flow line they use ethyl formate.

Judge Stephens: Raisins do not go on the foreign market unless they go through this process?

A. That is correct. The agency that is used mostly now, in the case of bulk cases, is ethyl bromide. That is the one I had forgotten.

Cross-examination:

[fol. 292] Q. You have the most thoroughly equipped plant and machinery equipment anywhere in the country, haven't you?

A. We do, yes.

Q. Yes. Now, many of these things that you do in your plant are not done in the ordinary packing plant, are they?

A. There are many of the individual operations that we do that are not duplicated in other plants.

Q. Yes. For instance, for the sugar test, most of them do that sugar test by eye, don't they?

A. It depends on the method of receiving. Under the adopted method of receiving the crop in the case of Sun Maid, that is handled similar to that on the chart.

Q. There isn't any other plant that has this equipment that puts the raisin through anything like the different processes that you do, is there?

A. Yes; there are two plants. The larger plant follows this general idea, but with a different type of equipment, possibly, in some respects.

Q. None of the smaller plants attempt anything of that sort, do they?

A. The smaller plants, I believe, now have as good stem equipment as we do, or any of the larger packers.

Q. But the stemming is one of the few processes. Outside of that they do not have these automatic weighing machines?

A. They do not have the automatic weighing machines, but they have the other equipment that is shown there, or equipment that performs that function.

Q. Are you familiar with Mr. Brown's plant?

A. No.

[fol. 293] Q. Do you know what he has in his plant?

A. I do not know.

Q. Are you familiar with Mr. Enoch's plant?

A. No.

Q. Does Mr. Enoch have equipment similar to that?

A. Mr. Enoch has stemming, he has his grading, he has his air separation. It may be in a different form there, but they perform that same function to raisins.

Q. As to those three things, but they don't have the automatic weighing?

A. No packer, other than Sun Maid has the automatic packaging equipment.

Q. Aren't there several matters, which you have indicated in your survey here, that are not found in any other plant except your own?

A. Other than the automatic packaging equipment, all the equipment you see on there is found in the majority of the plants.

Q. But many of the plants have much less equipment than that and still operate in interstate commerce and sell their raisins in competition with you, do they not?

Mr. Bowers: I object to that as calling for a conclusion. There is a lack of foundation here as to operating in interstate commerce.

Mr. Aynesworth: You have already stipulated that 95 per cent goes in interstate commerce. This is cross-examination.

Mr. Bowers: We haven't stipulated that these packers are in interstate commerce. It is assuming facts not in evidence.

[fol. 294] Mr. Aynesworth: I assume the court will take judicial notice that the packers are engaged in that.

Judge Beaumont: Read the question.

(Question read by reporter.)

Judge Beaumont: What is the objection?

Mr. Bowers: The objection is that it is assuming a fact not in evidence. The witness has testified as to the operation of the plant here, not any operation in interstate commerce.

Mr. Aynesworth: He testified he is sales manager for the Sun Maid.

Judge Stephens: What was that, as to the amount of raisins that go in interstate commerce?

Mr. Aynesworth: 90 to 95 per cent of all raisins go in interstate commerce. That is the stipulation.

Judge Beaumont: Objection overruled. You may answer.

A. In so far as I know, of course, the raisins we pack are marketed in competition with these other packers.

Judge Stephens: Mr. Aynesworth, the witness has said the same function is performed. That is the important thing; rather than the machinery that does it. Do you

contend that a raisin can properly be produced for the market with any of these functions left out?

Mr. Aynsworth: I will state this, and I believe this is correct; that they are marketing raisins all the time, that go into interstate commerce, without using anywhere near all the elements that the witness has testified to.

Judge Stephens: It might all be done by hand, but the function would still be there. In other words, they do have to be graded and washed—

[fol. 295] Mr. Aynsworth: And stemmed.

Judge Stephens: And stemmed.

Mr. Aynsworth: And packed.

Judge Stephens: The sand has to be sifted away from them; they have to go through the fumigator, and so forth.

Mr. Aynsworth: As I see it, that is the complete process. He has described a superior process here. I simply want to bring out the fact that the ordinary function, in the ordinary workings, is much simpler.

Judge Stephens: But what is interesting to us is the process or the function, rather than the type of machinery that is used.

By Mr. Aynsworth:

Q. Now, you are the only one that sells the Nectar raisins?

A. We are the only one that sells the Nectar raisin.

Q. Do you have brokers in the East that sell for you?

A. We do.

Q. You have brokers in all the principal markets?

A. We do.

Q. And you get your raisins from the local growers for the purpose of filling the orders which are obtained by these brokers in the other sections; is that right?

A. Yes, sir.

Q. And when you procure raisins from a grower you do that with the thought of disposing of those raisins through your brokers in other cities and places?

A. We do.

Q. You make your contracts with the growers for the purpose of enabling you to make firm commitments through your brokers to the buyers, do you not?

[fol. 296] A. We do. We have the fruit before we fill the sales.

Q. And the object of getting the fruit is to enable you to carry on this extensive commerce through your brokers?

A. Our object is to fill the orders that they sell; yes, sir.

Q. And if you were not able to make your contracts for purchase or acquisition from the growers you would be unable to carry on this extensive business, wouldn't you?

A. In our particular contracts we are covered on this at the start. We always feel covered.

Q. I don't understand your answer.

A. When we sell raisins we have them before we confirm the sale. Our brokers then sell them. They take the order and submit it to us for our confirmation. If we have the stock and it is agreeable to us, we confirm the order.

Q. Then your purchase or your acquisition of raisins from the grower is for the purpose of being able to approve and confirm orders sent in by your various brokers? How many brokers do you have throughout the United States?

A. I should judge more than a hundred.

Q. And in foreign countries?

A. We have one at the present.

Q. Well, when it isn't during a war how many do you have in foreign countries?

A. A maximum of four.

Q. A maximum of four. You sell in all countries, do you not?

A. Practically so.

Q. Through this system of brokers?

A. In London we have our own company.

[fol. 297] Q. In London you have your own company?

A. It handles England and Continental Europe and the Scandinavian countries.

Q. Does it in turn operate through brokers?

A. In some instances.

Q. Then you regard your contracts with your growers as a necessary part of your business in order to carry on this wide and extensive sale of raisins; is that right?

A. Yes.

Redirect examination.

By Mr. Walton:

Q. I would like to ask a little more about the storage of raisins in the condition that they are received. We will

call it the natural dried condition, before anything is done to them. Will you tell us a little more about the practice in the industry with respect to whether or not the processors ordinarily have on hand at all times unprocessed raisins, natural dried raisins, that they haven't done anything to?

A. They usually do have, yes.

Q. Now, I will ask you this; I am referring now to the raisins that have been exhibited here, as they are hauled in by trucks or other conveyances and before anything has been done to the natural sun dried raisins, outside of the sales from producers to the persons who maintain these plants, and outside of occasional sales between these persons owning these plants, are there any mercantile transactions in raisins in that state?

A. Not to my knowledge.

Q. Do you know of their being used, bartered or sold as a commodity at all in that condition, except in those two [fol. 298] instances?

A. I do not.

Q. Does your firm take those raisins, and without doing anything to them simply put them in containers and ship them anywhere?

A. Never.

Q. Do you know of their being on sale in any mercantile establishments anywhere?

A. I do not.

Q. Is it your testimony that the commodity in that condition is not sold, except as the object of the two transactions I have stated?

A. Definitely.

Q. Mr. Bowers has suggested a couple of questions I might ask. There has been some statement here regarding the larger and smaller packers. I believe it is in evidence yes, it is stipulated that, including the Sun Maid, there are approximately 40 packers. Could you give the court generally the average division of the business between those packers? In other words, take about the five largest, what percentage, ordinarily, of the raisin business do they handle?

A. Oh, the five largest ones would handle possibly 75 per cent of the crop.

Q. Probably 75 per cent of the crop?

A. That would be my estimate of the five.

Q. That would be your estimate over a period of years?

A. That is correct.

Q. Could you tell the court about the percentage that is handled by the ten largest?

[fol. 299] A. I should think that would run to a maximum, on an average, of about 85 per cent of the crop.

Q. About 85 per cent. That leaves about 30 processors who handle the remainder or 15 per cent?

A. That is the way we figure it, about.

Mr. Walton: That is all.

Recross-examination.

By Mr. Aynesworth:

Q. You do not mean to say that you do not make sales of anything except clean and prepared raisins, do you?

A. To the trade?

Q. Yes.

A. We do not.

Q. Don't you take orders often times, and have many orders for the sale of raisins that are still out in the sheds, uncleaned and unprepared?

A. In that form, no, sir.

Q. In other words, you never sell raisins unless you have got them in the carton?

Mr. Walton: Or prepared for the market.

By Mr. Aynesworth:

Q. You don't take future orders then, at all? You never take an order for raisins when you haven't got them actually stemmed and cleaned and packed in packages?

A. We do.

Q. Then your statement awhile ago that they are not commercially salable until they are actually cleaned and capped and boxed, and so forth; you did not mean that, did you?

[fol. 300] A. I intended to say that they are not fit for commercial use until they have been stemmed and cleaned.

Q. But many of your sales are made and, in fact, nearly all the sales are made before you do that; and on the basis of getting the sale or the contract you put them through

machines and get them in shape and send them out in response to the orders placed with the brokers; is that the case?

A. We sell against our raw stock quite often.

Q. Yes.

Judge Stephens: But they are never sold to be delivered in that form?

A. No, sir.

Redirect examination.

By Mr. Walton:

Q. Mr. Aynesworth suggested or stated, and you have stated that sometimes you take orders to deliver raisins which at the time have not been processed; is that correct?

A. That is correct, to this extent: that we take orders for packs that have to be processed, that we later make from the raw stock that we have in storage at the time the sale was made.

Q. But you don't take any orders to sell what you call raw stock?

A. Never.

MESROB MIRIGIAN, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

The Clerk: Will you please state your full name?

The Witness: Mesrob Mirigian.

[fol. 301] Direct examination.

By Mr. Walton:

Q. Mr. Mirigian, where do you live?

A. Fowler.

Q. Are you in any way connected with the production of raisins?

A. Yes.

Q. In what connection? In what capacity?

A. Operating 50 acres.

Q. 50 acres of raisin vineyard?

A. Yes. It isn't all in vineyard. Approximately 35 acres of raisin varieties.

Q. Raisin varieties, and which are they?

A. Muscats and Thompsons.

Q. How long have you owned and operated this property?

A. Well, I have lived on that particular one since 1917, and operated it actively, where I have had control of it, since 1927.

Q. How long have you lived in Fresno County?

A. Since 1900.

Q. And between 1900 and 1927 did you live on raisin producing property?

A. Yes, I lived 17 years in Selma; from 1900 until 1917.

Q. Was that owned by members of your family?

A. My father.

Q. Is it a fact that you assisted in the work on this property?

A. Well, at that ranch at Selma, it was after school when I was able to work. That was my childhood days.

Q. Mr. Mirigian, what connection, if any, have you with [fol. 302] the Raisin Proration Zone No. 1?

A. I am a member of the program committee from District 3.

Q. How long have you been a member of such program committee?

A. I believe it was last August, 1940.

Q. Coming back to the period, Mr. Mirigian, when you acquired your own property and began producing and selling raisins, I would like to ask you what conditions prevailed at that time, in the industry, with respect to grading raisins that were offered by the producers to the packers?

A. You mean grading raisins as they were delivered to the packing house?

Q. Yes.

A. Well, there was no set standard. The grading was done by the individual packer that bought these raisins.

Q. From the growers' viewpoint was that advantageous or disadvantageous?

A. Well, it would be on individual instances. I would say generally it was a disadvantage to the grower.

Q. For what reason?

A. Well, conditions would sometimes justify, where they buy at a higher price, and if the market should happen to be down they would grade it much heavier and cut down on your price.

Q. It is in evidence that the 1940 program has, in effect, grading provisions—uniform grading provisions. Does that present any advantage or is that, in your opinion, from a grower's viewpoint, a disadvantage?

A. Well, speaking as a whole, for the growers, I think [fol. 303] it is to their advantage.

Q. In what respect?

A. It would be a uniform grading, where one particular grade would apply to all alike.

Q. It is in evidence, Mr. Mirigian, that under the 1940 Raisin Program sub-standard and inferior raisins were removed from normal trade channels. Prior to this program was that the fact and condition in the raisin industry?

A. No, it wasn't.

Q. From the growers' viewpoint and the viewpoint of the industry generally do you consider that the diversion of the sub-standard and inferior raisins is advantageous, or not?

A. Well, speaking as a grower I think it is.

Q. State, please, why you make that statement?

A. Well, where a uniform grade exists and a certain type of raisin is unfit for the regular normal raisin trade channels, it would be eliminated off the market. Extra advantages are more disposal of raisins to the consumer, it would be greater, and that in turn would affect favorably towards growers, with more consumption of raisins. In the past—I know this definitely—that some raisins have been sold that really were not fit for human consumption, and they would not come back for any repeat orders when that type of raisin is put on the market.

Cross-examination:

Q. What do you term the sub-standard raisin?

A. The way I understand the sub-standard raisin is that it is a raisin below the standards set by the D. F. A., and which are below a certain sugar content by weight.

Q. It is still an edible article, is it not?

[fol. 304] A. If it is properly processed, you mean?

Q. If it is properly taken care of it is still an edible article, isn't it?

A. I don't think a sub-standard raisin is as edible as a standard raisin.

Q. That is true, but as an article it is still edible for food, isn't it?

A. I don't think it would kill anyone who ate it.

Q. In other words, it hasn't the same saleable quality as the other one, but it is still a marketable article?

A. I wouldn't say that.

Q. It has been sold in the past, hasn't it?

A. Yes, it has.

Q. It has gone through the market for 50 years, in the raisin industry, hasn't it?

A. Yes.

E. L. CHADDOCK, called as a witness on behalf of plaintiff, in rebuttal, being first duly sworn, testified as follows:

The Clerk: State your full name, please.

The Witness: E. L. Chaddock.

Direct examination.

By Mr. Aynesworth:

Q. What is your present business, Mr. Chaddock?

A. I am a raisin broker selling for about eight of the packers throughout the United States and Canada—throughout the world, the United States and Canada.

Q. When you say eight packers, you mean local raisin [fol. 305] packers?

A. Local raisin packers.

Q. How long have you been connected with the raisin industry?

A. I started in with the Eagle Packing Company in 1889, as a small boy, grinding raisins out with a hand stemmer.

Q. Would you state briefly to the court what your contact has since been with the raisin industry?

A. I started in with the Eagle Packing Company in 1889, my occupation being grinding away on a hand stemmer, in which the process is not very different from what it is today. And about a year later my father started in the raisin business and he didn't hardly know a raisin from a prune, and I did. I had had one year's experience, so I was quite helpful to him. Then in 1893 or 1894 I was appointed, as a young boy 19 years old, as manager of our Fowler plant, which afterwards became our big plant and

seeding plant, and which I managed for probably forty years.

Q. How many plants did you and your father operate?

A. In the nineties we operated about seven, scattered throughout the Valley.

Q. Have you been intimate with the industry at all times since your entry into it?

A. Yes, continuously.

Q. You have been informed and acquainted with the method of handling and preparing raisins for market and the marketing price, and so forth, from that time on?

A. Yes.

Q. With respect to the processing or preparing raisins for market, whichever it is, will you explain just what has [fol. 306] taken place over these years?

A. Well, perhaps it would save the court's time if I would describe, as nearly as I can, the processing in the early days, or the packing of raisins in the early days, and how it has changed down to the present time.

Q. All right.

Mr. Bowers: If the court please, I don't see the materiality of the processing of raisins ten or twenty or thirty years ago, to the case here. We are concerned with the present conditions and present functions; not with the development of it.

Mr. Aynesworth: I think this will be rather material, because there was some testimony given yesterday that the raisin is not commercially marketable or usable except after it goes through a very extensive process. I think I will show, by one who is one of the oldest in the industry in Fresno today, that it is a marketable product by a much simpler method, a very marketable and salable product.

Judge Beaumont: You may proceed.

A. The process of stemming raisins was simply to dump them into a hopper; they went through a rapidly revolving cylinder against a concave, a wire which knocked off the stems. Then they were graded, in those days, the Muscats into four grades, as described yesterday by Mr. Hines, and they went immediately into the box, which was nailed up, and loaded onto cars. That was the entire process.

By Mr. Aynesworth:

Q. At that time was there any cleaning or washing or

anything of that sort?

A. No, there wasn't.

Q. Was there any sugar test or anything of that sort?
[fol. 307] A. None.

Q. Was there any fumigating?

A. None.

Q. When was the first fumigating brought into the industry?

A. Well, I think, in a general way, it wasn't until possibly ten or twelve years ago. Possibly I am off a year or two or three, one way or the other, on that.

Q. Are you familiar with what is known as the dried pack of the American Seedless Raisin Company?

A. Yes.

Q. Just describe to the court that product.

A. I was very familiar with the American Seedless operation. We did their seeding for them for a great many years. I have been in their plant a great many times; and their process was to simply dump the raisins into the hoppers I have described; they went through the stemmer and the cone and cap stemmer, and then went directly into the 25 pound boxes; or in case they were put in cartons they were simply put in the cartons by hand—dumped in by hand, without any processing whatever or any washing or any cleaning, except what the cap stemmer did, which was supposed to knock off the sand or any dirt on a properly cured raisin, on a standard raisin, and they went into the carton ungraded, ungraded as to size, where today we have them graded in Fancy, Choice, and Midget Thompson; but in those days they were ungraded.

Q. Did they compete with the Sun Maid and Rosenberg and the others on favorable market conditions?

A. It usually brought from an eighth to a quarter of a [fol. 308] cent premium over Rosenberg, and I am inclined to think it brought a premium, sometimes, over Sun Maid. It was a very popular brand; in fact, the most popular brand at that time on the market. In fact, Mr. Nutting was the one that put the Thompson Seedless on the market throughout the country, and it was the most popular brand there was on the market.

By Mr. Aynesworth:

Q. Mr. Chaddock, with respect to the merits of the rais-

ins that have gone through this very minute detail or preparation and the raisins sent out in the dry pack, which has the superior quality?

A. I would say the dry pack.

By Mr. Aynesworth:

Q. Why is that?

A. It keeps better. A standard raisin, which is properly cured needs no processing whatever, in the true sense of processing. And when you wash a raisin, or any process that is put into a raisin, that has a deteriorating effect on that raisin, rather than a beneficial effect, for this reason: A raisin has a natural protective covering—now, this is somewhat technical—it has a natural protective coating called the bloom on the raisins; I imagine sort of an oil protective coating, a natural raisin oil, which protects the raisin and closes the pores. When you wash that bloom off and wash that protective coating off with water you have opened up the pores of the raisin, allowing the oxygen to get into the interior of it, and inside of 30 to 60 days that raisin begins to deteriorate. Many times if they use a little too much water it causes a crystallization of the raisin, which is very objectionable to the consumer and to the trade. And frequently a raisin which has been washed is apt to ferment; sometimes they will sour; but the keeping quality is very much reduced. A natural raisin on the stem will keep, if it is properly cured, from two to three years; and sometimes it is very difficult to tell an old crop of raisins from a new crop of raisins; but where you wash them it reduces that keeping quality.

Q. Why do they not, for instance, at Rosenberg's and Sun Maid and other places, pack up great quantities of raisins, using the method you heard here yesterday, and keep them in storage?

A. They found out by very bitter experience that if they did that those raisins, inside of 30 days, had a very rusty look. In the case of Muscats, you knock off the stem of the Muscat and it allows the air to get inside the raisin, and inside of a few months, sometimes inside of 30 days, that raisin begins to crystallize and look like an old raisin one or two years old.

Q. Are you familiar with the method used by packers like Mr. Brown in processing their raisins for market?

A. I have been in nearly every plant in the valley. I think I know the process that is used by all of them.

Q. Would you mind describing very briefly that used by packers like Mr. Brown?

A. I have been in Mr. Brown's plant. All he does is take the raisins off the wagon, put them onto a four-wheeled truck, wheel them over to the hopper of the stemmer, they whiz through the stemmer and cap stemmer, of which one of them is a cylinder, a rapidly revolving cylinder against a concave that sets about an inch from the cylinder, which knocks off the stems. There is a fan that blows the stems [fol. 310] out; then they go into the second recleaner or rotating cylinder and that knocks off the little bit of a cap stem, which in some cases is left on; then they go directly into a 25-pound box, which is nailed up if it is a wooden case, or in a fibre case which is glued and immediately trucked over into the cars. That is the operation.

Q. Does he put them through a grading process?

A. Yes. Sometimes he grades them and sometimes he doesn't. It is according to how his orders come in. Frequently they are ordered out ungraded. Sometimes they are ordered graded.

Q. Do you know whether or not the quality of raisins produced by him at his plant is a good standard commercial product?

A. We have sold many raisins for Mr. Brown and we have been complimented. I had a letter the other day complimenting one of his shipments. They said it was as fine a car as they ever received.

Mr. Aynesworth: Have you personally seen products that have come out of his place?

A. I have seen many cars.

Q. And are they all good, standard quality?

A. They are all good, standard quality, as far as I know.

Q. When you say "as far as you know" —

A. What I saw were standard quality.

Q. What about the practice throughout the history of the raisin industry with respect to the buying of raisins by the packers? When do they do their buying?

A. Well, usually they begin as soon as the frost danger [fol. 311] is over.

Q. When is that?

A. Well, the last killing frost we ever had was the 2nd of May, back in the nineties; a very killing frost.

Q. When is the usual last frost?

A. Usually the last, about the 20th of April.

Q. They begin to buy at that time?

A. The eastern buyers begin soliciting, but some of the packers, through their brokerage system, solicit orders from the buyers in a similar way, and if they sell a car of raisins, they, in turn, make a contract with the growers to cover that sale. That is a common practice. Sometimes a packer will buy short and sometimes he will buy long, according to the trend of the market, whether he thinks it is going to be up or down. But the general practice is, at least with the medium sized packers, to buy and sell contracts, contracting the eastern buyer and the grower for fall delivery.

Q. Do the little packers carry on their business that way?

A. Yes.

Q. Do the packers, generally speaking, have brokers and agents throughout the states?

A. They all have.

Q. And do you yourself do business through eastern brokers?

A. Yes.

Q. Mr. Chaddock, you are familiar with the matter of handling layer Muscats, are you?

A. Yes.

[fol. 312] Q. Just how are they handled?

A. They are brought in from the farmer usually today; he has what is known as trays. The grower dumps three or four trays into a box, then lays a sheet of paper in there and dumps three or four more trays in until the box is full. Those raisins are supposed to stand in the field and equalize as to their moisture content. Some bunches will have some under-cured berries and some over-cured berries on the bunch; and the proper method of the grower—it is if he is a careful grower—is to let those raisins stand for some weeks so that the moisture of the big berries will absorb into the dry berries and into the stem, so as to make the stem pliable so it can be handled. If this is not done the stems are very brittle, and you almost look at them cross-eyed and they will fall off the stem.

Q. When they get into the hands of the packer how does he handle them?

A. He simply places that sweatbox before a 20-pound box and lifts the raisins out of the sweatbox and places them into the 20-pound box.

Q. Do they ever steam them or do anything to make the stems less brittle?

A. Yes; they do; if the raisin is not properly cured they do. They are sometimes forced to do that by improper curing or improper sweating of the raisin by the grower. If the grower holds his raisins back until they are properly cured, they are not steamed, or no process whatever. If the grower rushes his raisins into the packing house the stems are apt to be brittle; there will be berries on there that are too dry; and the custom of the packer is to not put them in the steam house unless he is rushed to get them out. Sometimes if you have got an order going out tomorrow you can't let [fol. 313] those raisins set there two or three weeks to equalize and so you are forced, sometimes, to put them into a steam house and to moisten up the stems where they can be handled without breaking; but that is merely to speed up the operation. It has nothing to do with the preparation of the raisin.

Q. Yesterday the witness was telling us it only took eight minutes from the time they begin this elaborate handling of the raisin until the large box was put out, and ten minutes for the smaller carton.

In the ordinary small plant, where they do not use that system; from the time they start on a box of raisins, how long will it be before it is in the larger box or the carton?

A. From the time it goes into the hopper, dumped into the hopper of the stemmer, it is in the 25-pound box, I would say, in half a minute or a minute.

Q. And the carton?

A. In the carton—they are taken from the stemmer and placed before the women and they are filled, in most of the plants, by hand. I think the Sun Maid has a more elaborate process. They have a lot of automatic machinery that is not commonly used by the other packers.

Q. When a packer like Mr. Brown gets his raisins from the grower and has an order for them, how much time would they stop at his packing plant before they could be in the box or in the carton and on their way to the market?

A. In his particular plant he is not on the railroad, so he would have to arrange for a truck to call for the raisins. [fol. 314] Q. Well, assuming a truck was there?

A. Assuming that the truck was there and the load of raisins was there from the grower, they would go immediately from the wagon into the hopper, through the steamer into the box and into the truck. I don't imagine it would take over 5 or 6 minutes.

Q. Of course, Mr. Chaddock, if it was a large shipment it would take a greater length of time to get it out?

A. Yes.

Q. It would depend on the size of the order, as to the time it would take to run it through?

A. I was referring to the individual case that would go onto the truck at that time.

Q. That statement would be true relative to the one sweatbox?

A. Yes.

Q. But it would depend upon the amount of raisins to be handled and to be prepared and to be taken care of?

A. Yes.

Mr. Aynesworth: Take the witness.

Cross-examination.

By Mr. Walton:

Q. Mr. Chaddock, in that case that has just been discussed, I would like to ask you to give us a little more information about that. As I understand your testimony it is that under certain conditions, if the incoming raisins are in immediate demand in response to an order, it is desirable and the practice is to take them in the receiving door, process them, and immediately load them out; is that correct? [fol. 315] A. Yes.

Q. Isn't it a fact, Mr. Chaddock, that that is, you might say, an ideal condition, but very often doesn't prevail?

A. That is true.

Q. In other words, the packer, in the interest of economy, likes to do that; that is correct?

A. Yes.

Q. But isn't it also true that they are controlled by two factors? The orders that they have to fill and the delivery to them of the raisins are more or less beyond their control; is that correct?

A. That is correct.

Q. We will take, for example, a packer who goes out along in the spring or summer and takes orders to sell and deliver these raisins beginning about October and, say, to December. He has those orders and he, as far as he can, gets his growers' deliveries to synchronize with those; is that correct?

A. That is correct.

Q. Isn't it a fact, however, that at the peak of the marketing season that is entirely impossible?

A. Yes.

Q. Isn't it a fact that a good many more raisins come in, and this is universal—than he can pack out, at certain periods?

A. Yes.

Q. Isn't it a further fact that, getting most of his raisins in the month of October, November and December, and desiring to sell raisins for twelve months, in addition to the fact that he can't synchronize the orders in the fall, [fol. 316] he has to, if he is going to stay in business, put a supply in storage?

A. That is correct.

Q. And so in the case of the ordinary run of packers, there are always a considerable quantity of raisins in storage; is that right?

A. Yes.

Q. Even at the height of his packing house season, and that is because he can't keep up with what is coming in; that is one reason; is that right?

A. Yes.

Q. And the other reason is that he buys and stores them to fill orders during the time the growers aren't delivering; is that right?

A. That is correct.

Q. Of course, these inventories vary, but the storage represents a large percentage of the raisins, ordinarily, doesn't it?

A. Well, with any individual packer, it depends on the size of the packer, I think. The big packer, of course, can store big quantities of raisins. He has the money to do it with. The small packer, with less finances, has to operate his business more or less on a merchandise basis, having the raisins delivered today and shipping them out tomorrow. Otherwise, his bank account is apt to get involved,

unless he does that. It depends largely on the size of the packer; the financial situation of the packer. Some packers store them in big quantities.

Q. That undoubtedly would be true, but it would be unusual to find a packer without raisins in storage if he was [fol. 317] actively in the business, wouldn't it?

A. He would have some raisins, as a rule, except I would qualify that, that during the period from May until October frequently the packers, especially the smaller packers, are often without raisins.

Q. For a short time they are without raisins?

A. For several months they are apt to be; some years worse than others, of course.

Q. But the point is that during the time they are operating they always have raisins in storage?

A. During the rush season they nearly always have some raisins. I wouldn't say that during September and October they store up much. The small packer doesn't; and I doubt if the big packers store many raisins in the early part of October.

Q. Then the raw goods that are in, awaiting future orders, or future shipments, are not processed until just before they are going to be shipped; is that correct?

A. They are not processed in what way, do you mean?

Q. I mean they are not stemmed or cleaned; they are kept in the sweatbox?

A. They are kept in the sweatbox.

Q. In other words, these raisins that a factory is going to receive in October, and say they are going to ship them two months later, they would not stem them and clean them and package them and keep them in that shape until they are ready to ship them; they keep them in the raw shape in the sweat box and stem them and prepare them and clean them and put them in packages immediately before shipment?

A. Yes.

[fol. 318] Q. That is the custom?

A. Yes.

Q. Mr. Chaddock, I don't care particularly about this, and if you don't care to state it is all right; but do you mind stating the ones for which you act as broker? If you prefer not to answer, I don't care.

A. It is no secret at all. Do you want their names?

Q. Yes. It isn't important, if it is something you would rather not state.

A. I have no objection to it at all.

Q. Will you state them?

A. I can perhaps name most of them from memory. I sell raisins for Mr. Brown, the Empire Packing Company, the Del Rey Packing Company, Pelonian Packing Company, the El Mar Packing Company, the California Raisin Company, of which my son is sales manager; the Central Valley Raisin Company, the Selma—

Q. You don't represent any of the four or five known as the larger packers?

A. No; we do no business with them at all.

Q. They have their own agencies?

A. They have their own brokers.

Q. And this dry pack, the American Seedless dry pack is a very distinctive and important factor in the industry, isn't it?

A. It was.

Q. Was that a patented process that nobody else could use, this American Seedless dry pack?

A. No; it was the common way of putting up Thompson seedless raisin for years and years.

[fol. 319] Judge Stephens: Pardon the interruption, but it seems to me that what we must get at are the actualities; not why.

A. Well, I was going to show, if your Honor please, the reason it was necessary to use water on a raisin.

Judge Stephens: Well, it still is, isn't it?

A. Under the change in the system of packing with the new Philadelphia recleaner, they had a tendency to gum up, and you can't operate the Philadelphia cleaner today without the use of water. That is the primary reason for using water. It isn't to wash the raisin. A properly cured raisin, a standard raisin needs no washing. It has been used for years and years without washing.

WILLIAM N. KEELER, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

The Clerk: Please state your name?

The Witness: William N. Keeler.

Direct examination.

By Mr. Bowers:

Q. Mr. Keeler, will you state what connection, if any, you have with the raisin industry and what the extent of it has been?

A. Since July, 1923, I have been connected with the Sun Maid organization; that is, the Sun Maid Raisin Growers Association, and since May, 1931, have been the general manager.

Q. As such have you been in constant touch with the situation in the raisin industry?

A. Yes.

Q. In all of its functions?

[fol. 320] A. Yes; I can say that I have.

Q. Were you familiar with the method of handling the raisins, the transactions between the growers and packers, prior to the institution of a raisin program under the Agricultural Prorate Act?

A. Yes, I am.

By Mr. Bowers:

Q. Mr. Keeler, can you state what is the customary method of the sale and purchase, and the time season, between the grower and the packer?

A. Yes, I can. The packers, over a period of several months—the delivery period—purchase normally most of their requirements, and by “requirements” I mean the tonnage that they will require to fill their sales during the forthcoming year. These growers, in the aggregate, sell and dispose of, during the months of August, September, October and November, the quantity of raisins that the packers, in turn, sell over a period of a year or more.

Q. At that time was there any universal system of grading of the raisins as they came in, in the raw product, from the growers, or did each packer use his own discretion?

A. Well, since I have been familiar with the industry the Dried Fruit Association maintained—the packers have purchased, under what is known as the Dried Fruit Association purchase contracts. That provides a definite description of the raisins to be purchased. At any time that the grower believes that the grading is unfair he has a right to arbitrate that finding.

Q. And that was done individually by each packer as he purchased raisins?

A. It was done in connection with the purchases of each [fol. 321] of the individual packers, yes.

Q. Are you familiar with the grading requirements under the present program, the 1940 seasonal program?

A. Yes, I am.

Q. To what extent is there a difference, if any between the two systems?

A. I would say roughly they are the same. As a matter of fact, I know that the grade adopted and approved, as adopted under the prorate program and approved by the Commodity Credit Corporation in connection with their loans, were the result of a very careful study made by representatives of the F. S. C. C. and Commodity Credit Corporation; and the grading actually done in the industry, prior to putting the program into effect, I would say the net results were very much the same.

Q. Have they both resulted in the elimination of the same character of raisins from the market?

A. I think we will have to draw a difference there. I was thinking of the grading. As a matter of fact, before, separate and apart from any program, there was no inhibition on any packers from receiving raisins of low grade or off grade raisins, paying for them whatever price was arrived at between themselves and the grower. Under the program, of course, there is a definite program against receiving off grade raisins. There is that difference. It isn't a difference in the grading so much as a difference in the result of the grading, as far as the use or availability of that particular fruit.

Q. That grading is entirely distinct and separate, is it, from the trade grading of the choice and fancy raisins, and [fol. 322] so forth?

A. Yes, it is.

Q. There is no connection at all between the two?

A. No.

Q. Referring to the carry-over that was on hand as of September 1, 1940, of the 70,000 tons, was that carry-over in the form of the raw product as it came from the growers and which the packers had stored as received, or was it in the form of finished and packaged raisins?

A. It would be almost entirely in the form of sweatbox goods, that is, raisins stored in sweatboxes or packing boxes

as received from the grower. May I make a statement with respect to a previous answer which I made?

Q. Yes.

A. You asked if there is any difference between the grading set up under the program and the normal grading. I answered that roughly they are the same. There is this difference in form under the grading set up by the program: There is a moisture—a specific weight by gravity test, which our own organization has utilized for years, I think back as far as 1924 and 1925. That, in effect, is almost identical with what is known ordinarily as eye grading, but the specific provision was placed in this program, actually requiring this particular test. The result, I would say, of the two would be almost identical.

Q. Referring to the 1939 crop of raisins, were there at all times, prior to and up to September, 1940, an available supply, in the State of California, of that crop?

A. Yes. I would go further than that. I would say there was an over supply.

[fol. 323] Q. Would you say that the raisin program, either in 1938 or 1940, has at any time left an insufficient supply in the hands of packers to meet the market demands?

A. No, I would not. I would say that at all times, up to and including the present, there have always been raisins available to packers at a price that would allow them to meet competition, during the period that you mention.

Q. In other words, the problem of the industry has been a marketing problem, and not the supply of raisins?

A. It has been a——

Q. You have always had plenty of a supply, but you didn't have the market to absorb them?

A. It has been a distribution problem largely, yes.

Direct examination.

By Mr. Aten:

Q. Mr. Brown, you stated in your examination, and it is pleaded in the pleadings here, that a prorate enforcement is maintaining, or was and is maintaining watchers out around your property and your plant. Are they still doing so?

A. Yes.

Mr. Aten: I have one more question, and the reason I am

asking these questions is because yesterday some member of the court made the inquiry or the observation that they wanted to see if this is a continuing situation. We claim that it is, of course, and that it isn't at all a moot question, for the various reasons that Mr. Brown has stated.

Judge Beaumont: Well, proceed.

By Mr. Aten:

Q. You allege in your complaint, Mr. Brown, that the enforcing officers have threatened to enforce the penalties, provided by the act, against you, that is, \$500 for each violation; is that correct?

A. Yes.

Q. To what extent?

A. To the extent that they are maintaining two actions against me for \$13,000?

Q. For violations of the act?

A. For violations.

Q. And have they threatened to bring other—

A. Yes. They saw our trucks and attempted to talk to the growers, trying to dissuade them from selling raisins to us.

Judge Beaumont: As far as the actions are concerned, Mr. Aten, you would know about that. Are those the actions that are based on the provision for fine?

Mr. Aten: Not a fine. There is a civil penalty of \$500 for each violation, and the two actions allege violations of sufficient number to bring the total demand to \$13,000.

Judge Beaumont: It is a civil action for penalties?

Mr. Aten: Yes. Those actions are pending in the State court.

Judge Beaumont: Very well.

[fol. 325]. FROM REPORTER'S TRANSCRIPT OF OCTOBER 16, 1941

The above entitled matter came on for post trial hearing on settlement of findings in the United States District Court in and for the Southern District of California Northern Division before Honorable Albert Lee Stephens, Honorable Leon R. Yankwich, and Honorable Campbell E. Beaumont,

on the 16th day of October, 1941, commencing at the hour of 10 o'clock a.m.

Judge Beaumont: I think for the purpose of the record, it is well to state that before the reporter was called the matter of the possible re-opening of the case for further testimony was considered. Statements were made by Judge Stephens and Judge Yankwich. Mr. Bowers made a statement also regarding the matter, and it may be considered that his statement is in the nature of an objection to the opening of the case. That objection is overruled. The case will now be reopened for one purpose only, and that is for the purpose of receiving testimony regarding the character of shipments by Mr. Brown, as to whether or not these shipments were interstate. The defendants, of course, will be allowed to offer any testimony they desire to offer, if they so desire in refutation thereof. The purpose of this reopening is for enlightening the Court as to the one matter only. Now is there any further statement? Judge Stephens, any further statement you desire?

Judge Stephens: No. That covers it.

Judge Beaumont: Judge Yankwich?

Judge Yankwich: No.

[fol. 326] PORTER L. BROWN (Plaintiff) called as a witness in his own behalf, and being first duly sworn, testified as follows:

Mr. Aten: Mr. Brown, on the trial of the action we introduced certain contracts which you had made in the spring of the year 1940 calling for delivery of 1940 crop raisins in the fall of that year. Amongst those contracts was one with the American Trading Company, two with the American Trading Company. Is that correct?

A. Yes, sir.

Mr. Aten: I believe the contracts all read "Subject to shipping order," do they not, Mr. Brown?

A. Yes, sir.

Mr. Aten:

Q. I might ask you, Mr. Brown, in taking these contracts

and in the conduct of business generally, are the shipping orders or the destination of raisins usually given in the pre-season contracts?

A. They aren't given in the pre-season contract.

Mr. Aten: This contract with the American Trading Company is Exhibit 1. This is time of shipment, October.

Q. Do you find anything on the contract itself showing the point of delivery of shipment?

A. No. There is nothing on the contract that indicates the point of shipment.

Q. Now did you on that contract and with the other contract that is in evidence with the same parties receive shipping orders?

A. We received shipping orders.

Q. And what were those orders? That is, what was the destination? Where were the goods to be shipped to?

Mr. Bowers: Just a moment. If there are any shipping orders on that, we object to any evidence. The shipping [fol. 327] orders are the best evidence.

Mr. Aten: Were those orders—

Judge Stephens (Interrupting): What do you mean by shipping orders, Mr. Aten?

A. This contract calls for 10,000 cases of raisins. We would get shipping orders for—

Judge Stephens (Interrupting): In what way did you get those? Were they in some letter or something of that kind?

A. Yes, regular forms of shipping orders from this American Trading Company advising us to ship—

Judge Stephens (Interrupting): Do you have those letters?

A. No, I don't have them with me. I have them at home.

Judge Stephens: Do you object to him stating what they stated, Mr. Bowers? He says he has these letters at home.

Mr. Bowers: Well, if the Court please, here is my point: I haven't that contract before me, but here is a similar one, and the contract states, "F. O. B. cars Kerman, California." Now I don't think that—

Mr. Aten (Interrupting): That is merely a loading.

Judge Stephens: I suppose, Mr. Bowers, that if they

were trying to enforce that contract your objection would be good, but this is for a quite a different purpose. It is to show actually where they were to deliver them, whether to deliver them into interstate commerce or not. And I doubt very much if this would be binding the same way a suit on a contract would be binding.

Mr. Bowers: Well my point was as I say according to the contract here that these contracts provided here for the delivery.

Judge Stephens: Well it says, "F. O. B. Kerman, California."

Mr. Bowers: "F. O. B. cars at Kerman, California," yes. [fol. 328] I think now what the witness and what counsel are attempting to do is to establish that subsequently the buyer here asked for shipment to be made to different points. In other words that so far as his contract for the sale here, the contract itself calls for the delivery here, f. o. b., and then subsequently the buyer—there is no question about that, as far as that is concerned, that the ultimate buyers took a large portion of them outside of the state. But now my point here is that Mr. Brown was not—the plaintiff here was not selling them direct outside of the state. He was selling for delivery here. And then possibly following the directions as a—acting for the California Trading—or whoever the contract is here, the American Trading Company, to pack and load the cars for them in which they were selling the raisins to points outside of the state. I think that is just exactly what the testimony will develop is the truth.

Judge Stephens: Well I think we all understand the point you are developing. If my associates are in agreement, I would overrule that objection in order that we may get the facts. I would like to have that developed a little bit.

Judge Yankwich: I join.

Mr. Aten: What was the question, Mr. Reporter?

(Question read, as follows: "And what were those orders? That is, what was the destination? Where were the goods to be shipped to?")

A. The goods were to be shipped to Minnesota and Mississippi.

Q. Does that refer to both of the American Trading Company contracts or to the one?

A. It refers to this American Trading Company.

Q. American Trading Company. There was a second [fol. 329] American Trading Company contract. Did you receive shipping orders on this?

A. Yes, sir.

Q. And where were those goods to be shipped?

Mr. Bowers: Understood that is subject to the same objection?

Judge Stephens: Same objection, and same ruling.

A. They were to go to Chicago and New York.

Mr. Aten:

Q. There was a contract, Dried Fruit Distributors of California, Napa, and on this contract it says "Routing later. F. O. B. seller's plant, Kerman." Did you receive a shipping order or routing on those goods?

A. Yes, sir.

Q. And where were those to be shipped?

Mr. Bowers: The same objection. I assume that the same testimony, that those were written orders.

Mr. Aten: Answer.

A. They were written orders, yes, sir.

Mr. Bowers: Then we make the same objection to these.

Judge Stephens: Are you pressing the objection that you haven't the original letters here, Mr. Bowers?

Mr. Bowers: Yes. I am pressing that point for this reason, that I am going to ask if the testimony is, as it has been, admitted here on that, for the opportunity to produce from these people, the American Trading Company, and these others, the letters themselves, unless it is stipulated—

Mr. Aten (Interrupting): Well we will produce those. Can you deliver those here, Mr. Brown?

Judge Stephens: Well I wouldn't want the objection to depend upon the fact that we were receiving some evidence in writing. I think you ought to see those.

Mr. Bowers: I am objecting to that, because I think those will show—I have no objection, if the Court please if it is stipulated, which I think is the fact, and I think [fol. 330] the parties here know it is the fact, that these shipping orders were shipping orders that were received.

later, nine months later than the making of these contracts, and they were received in fulfillment of subsequent sales that were made by the buyers named under these contracts to other parties. And in other words that Mr. Brown was merely shipping them out and filling out the instructions of the American Trading Company on sales that they made of these same raisins.

Judge Stephens: To the extent that the stipulation goes, will it be accepted by counsel?

Mr. Aten: Well, I think so.

Judge Stephens: Let me follow that with a question.

Q. Mr. Brown, what actually happened to the raisins that were contracted for?

A. We loaded those into cars, and shipped those into interstate commerce and retained title on them for several days, until the goods were paid for. The contract called—permitted them to have ten days to pay for the goods.

Judge Stephens: Who were "them"?

A. The buyer, the American Trading Company in this instance. And often the car would arrive at its destination before the goods were paid for.

Mr. Bowers: We move the answer be stricken out as containing conclusions of the witness, and that the contracts themselves insofar as title and payment are the best evidence.

Mr. Aten: Well I think what the witness is stating is simply they held the bill of lading and the title to the goods until it was paid. I think that is all it amounts to.

Judge Stephens: Overrule the objection.

Judge Beaumont: I think it was a motion to strike.

[fol. 331] Judge Stephens: The motion is denied.

Mr. Aten: In reference to the stipulation, your Honor please, a moment ago, I wasn't paying so close attention to the language that he used, but I did hear him state that these raisins were subsequent sales of the American Trading Company or the other purchasers. That of course we don't know, and are not prepared to stipulate, whether the American Trading Company had at the time they contracted with Mr. Brown on these contracts made sales before they purchased. We are not in position to know that, and we can't stipulate to that.

Judge Stephens: Well, Mr. Brown, from your statement so far—you are here complaining of something. Where were you harmed? Where do you claim that this course that you just described did you any harm? You say you entered into these contracts that we have before us, that you had directions to deliver them to some transportation company, that you held the bill of lading, I believe, as security for the price. What happened after that? Anything? Did you get paid for them?

A. Yes.

Judge Stephens: There was no interruption to the shipment of raisins, was there? You actually completed—you delivered them, and you went into interstate commerce. You got your money for them. What would be your complaint on that?

A. Well we are not complaining against the buyer. We are complaining against the Prorate.

Judge Stephens: I know, but—you see what I am getting at, Mr. Aten?

Mr. Aten: I don't, your Honor. I think the complaint, as I see it, from the—I think—pardon me, Judge.

Judge Yankwich: Go ahead.

Mr. Aten: I think the complaint is that they were damaged [fol. 332] aged by reason of the program. And this particular—I don't know what the fact is, whether Mr. Brown is now testifying he did make an actual shipment on that later or not, but that again, your Honor please, goes back to the time—and I furnished the Court memorandum which is probably still in the file, I don't know that it is—the condition at the time, at the time the suit was filed. That fixes the jurisdictional amount.

Judge Stephens: I am not getting at the jurisdictional amount. That isn't the uppermost thought in mind here. If Mr. Brown, who has here complained, sold his grapes, his raisins, delivered them, and he got paid for them, where is there any complaint?

Mr. Aten: The interference.

Judge Stephens: Where was interference?

Mr. Aten: With the interstate commerce. The program which took control of the raisins—

Judge Stephens: If he conformed to the program, why he waived that objection.

Mr. Aten: He didn't conform, your Honor.

Judge Stephens: Well, he wasn't interfered with, was he?

Mr. Aten: Yes, your Honor. The evidence was immediately the program went into effect, it raised the prices of raisins that he had to go out and buy, and he was damaged even if he filled all his contracts. He was still damaged above the jurisdictional amount, because of the operation of the program.

Judge Yankwich: The point is this, was he damaged by any interference with interstate commerce if he sold to American Trading Company and his obligation was to them? The main question is: has the program as affecting him anything to do with interstate commerce? Perhaps it isn't responsive, but it would seem to me you would [fol. 333] have to show under your requested findings to that effect, you would have to show—or if it is immaterial, then you can depend on the general proposition, but if it is material as the finding you would ask would seem to indicate, you would have to show not only the program as a whole was a burden on the interstate commerce but he in fact was damaged by the interference with the interstate commerce. But if he sold to the American Trading Company, and his obligation was to deliver them, the mere fact they later on gave him shipment shall not affect his shipment of intrastate commerce. He had a purely intrastate transaction with them, and therefore there would be no direct interference with his right to ship in interstate commerce. You see?

Judge Stephens: And if incidentally he would be damaged, that would be an ordinary action in the State court to recover damage.

Mr. Aten: Well the Act itself provides that there is no recovery, no liability on the program or the Zone for any damage they might inflict. But getting back to the question again, here is one contract—I am not certain whether he is speaking of the complete fulfillment of this particular contract or not, but there are five or six other contracts, and there were—some of them at least, if not all were not fulfilled. There were these regulations of the Prorate that held all of these raisins except the 30 per cent free tonnage in the two pools until after January, and he couldn't get raisins, as the testimony shows, for the purpose of shipping under interstate commerce to fill these orders.

Judge Stephens: Pardon me. I think that this is a good time to break this examination and let Mr. Brown go to his [fol. 334] home or office and equip himself with all the papers he is going to refer to. It is fairer to both sides to have them here.

Mr. Aten: That is the shipping orders that were received, I suppose, on any of these contracts? These written orders?

Q. Did you receive any shipping orders orally either by phone or direct communication?

A. I am sure that if we did receive them by phone they were followed up with letters or regular form of instruction.

Mr. Aten:

Q. Mr. Brown, have you now with you any written evidence of the orders that you received on the American Trading Company contracts?

A. Yes, sir.

Q. And will you produce them? You might yourself designate—state what it is and when you received it, and to what point it calls for shipment. Of course the instrument states itself that—

Mr. Bowers: One observation that I have. I don't know what this testimony may go to in this connection, but if it refers to the contracts that are already in evidence, I am wondering if it is admissible as being an attempt to impeach their own witness. Now I call attention to the fact that in the trial of the action, page 40 and 41 of the transcript that the question was gone into. Judge Stephens asked him then, this witness: "You did not have any understanding with anybody that any of these raisins should be shipped out of the state, did you? A. It was understood that they were to be shipped out of the state, your Honor. For instance—" And then a motion to strike, and Judge Stephens continuing:

"Yes. The answer may go out. Did you have any understanding with any of these people that they would ship them out of the state? A. No, sir.

[fol. 335] "Judge Stephens: Did you care whether they were shipped out of the state or not? A. Not particularly, no.

"Judge Stephens: You just understood that they were going to go out of the state? A. Yes.

"Judge Stephens: What was the basis of your understanding that they were to be shipped out of the state?

"A. My basis of understanding was on past performance of contracts made with these people that they were shipped out of the state.

"Judge Stephens: Just because they had purchased raisins before and shipped them out, you assumed they were going to take the same course? A. Yes, sir."

Now it seems to me that that is direct, upon the particular point, as to what happened to these raisins.

Mr. Aten: Immediately following that, if your Honor please,

"By Judge Stephens: Let's see if we can shorten it. Can't we now say each side admits that the raisins which were the subject of these contracts that have just been introduced in evidence would take the same course that is outlined in the stipulation?

"Mr. Aten: We are willing to stipulate to that.

"Mr. Bowers: Yes. We are willing to stipulate to that."

Judge Stephens: But you see, just before that colloquy you asked a question and we sustained the objection to it through my reading those questions—my propounding those questions. Now in going over the record, we made up our minds that we would rather have it directly from the witness rather than by the Court's cross-examination, as it were.

Mr. Aten: Well then that is the purpose of course of the question I have now asked the witness.

[fol. 336] Judge Stephens: The objection will be overruled.

Mr. Aten:

Q. Would you state what you have there on orders—

A. (Interrupting) I have shipping instructions from the American Trading Company for raisins applying against their contract.

Q. And what was the instruction?

Mr. Bowers: Just a moment. It was a written instruction. Let's see it and offer it.

Mr. Aten: We will offer it in evidence, but first——

Mr. Bowers: (Interrupting) We want to see it.

Mr. Aten: Have you more than one?

A. Yes, sir.

Q. If you will give us all of them.

(Witness hands to counsel.)

Q. Are these all of the American Trading?

A. Yes.

Mr. Aten: We have six of them altogether (handing documents to counsel.)

Mr. Bowers: Well, if the Court please, we make the same objection that if they are introduced for the purpose of varying the witness' former testimony, that it is an attempt to impeach their own witness. If they do not vary the same, they are immaterial, because they add nothing to it. And I believe furthermore that they are all matters subsequent to the commencement of this action. I am not sure on all of them on that, but I think they are.

Judge Stephens: It will be overruled.

Mr. Aten: There are six of these shipping instructions from the American Trading Company, Mr. Brown, I believe?

A. Yes, sir.

Mr. Aten: I think since they are all in reference to the same contract that we will just offer them as one exhibit, if that is all right.

[fol. 337] Judge Stephens: They may be deemed read into the record without their being read actually?

Mr. Bowers: Yes.

Judge Stephens: Let them be marked. What mark shall they take?

The Clerk: 10 is the next number, your Honor.

(Offers received in evidence and marked Plaintiff's Exhibit No. 10.)

Mr. Aten:

Q. Referring to them, Mr. Brown, the first one there, to what destination were the raisins on that order to go?

Mr. Bowers: Just a moment. We object to that. The order speaks for itself.

Mr. Aten: Well the Court hasn't seen them.

Mr. Bowers: Well, they have been offered in evidence for the Court to examine and we—I don't care for the witness' conclusion.

Judge Stephens: What was the question? I didn't get the whole question.

(Question read.)

Judge Stephens: Well, let's see them.

Mr. Aten: I believe that the orders do not all show on their face where the raisins were to go. They were to go to port before going to sea shipment, either Stockton or San Francisco.

Mr. Bowers: The directions were to deliver them to the port of Stockton.

Mr. Aten: But then the witness knows exactly where the raisins were to be embarked for.

Judge Stephens: The Court is of the opinion that the witness may refer to these separate shipping instructions, [fol. 338] and if he knows of his own knowledge what the destination was beyond what is stated on the face, he may state it.

Mr. Aten:

Q. Will you take each of those, Mr. Brown, and state in reference to each lot, if you know, the destination of the goods.

Judge Stephens: Do you want to note your exception to that ruling, Mr. —

Mr. Bowers: Well I understood that we had exceptions to all the Court's rulings, but maybe I am mistaken on that. If so, I would like to note an exception to all of the Court's rulings contrary to our objections.

Judge Stephens: All right.

A. Well first shipping instructions were for a steamer, Kansan.

Judge Stephens: Just reading that from the face?

A. Yes, sir. And these goods were to be shipped to New York.

Mr. Aten:

Q. Does that fact that they were to be shipped to New York appear on the document itself?

A. It does not on this particular document, no, sir.

Q. Very well.

A. On the second shipping instructions we had shipping marks giving the number and the steamer that they were to sail on for Manhattan, and those markings show on the shipping instruction.

On the third shipping instructions the shipping marks were BB and S, Providence Rhode Island, No. 768.

The fourth instructions were for—named the steamer they were for and were sailing to Manhattan and the shipping number and port of landing are shown on the instruction.

Judge Stephens: What is that letter? Let's see it, the letter.

A. And the fifth instructions were—show the steamer they were sailing on, the shipping marks and to the port of Manhattan.

[fol. 339] Judge Stephens: Here is a letter inadvertently included in this exhibit. I don't think it has anything to do with it.

Mr. Aten: Then there are only five of these, instead of six?

A. Yes, sir.

Q. Five in that exhibit. Now do you have the shipping instructions for the Dried Fruit contract that is in evidence?

A. Yes, sir.

Q. The name of that organization was Dried Fruit?

A. Dried Fruit Distributors.

Q. Distributors?

A. Of California.

Q. Yes. How many of those were there?

A. Ten.

Q. Ten of them?

A. Yes, sir.

Q. Mr. Brown, taking these then in the order in which they are there, the name Dried Fruit Distributors does not appear there, but the name of McDonnell. Will you explain that?

A. The Dried Fruit Distributors of California got into a little trouble and Mr. McDonnell asked to have this contract assigned to him. We have the correspondence here covering that matter. Will you—

Q. I don't think it will be necessary to go into that. That explains why it was McDonnell instead of Dried Fruit. But those orders were on the Dried Fruit Distributors' contract?

A. Yes, sir.

Q. And to what destination, if you will take them one by one, were those goods to be shipped?

Judge Stephens: And are you testifying to that from the face or from memory? The face of the document?

A. I will testify from the face of the document.

Q. They do show on the face where they were destined to go?

A. Yes. The markings show.

[fol. 340] Judge Stephens: Well are the markings plain or do we have to them interpreted?

Mr. Aten: Well I am not very familiar. I didn't get a chance to look at them, if the Court please. I am not familiar with them.

Judge Stephens: Well now as an illustration down at the bottom of the first one it says, "Mark one side 'Q. M. Replacement Center. Torrey Pines, Linda Vista, California. S-3393.'" Does that indicate where they are going? Is that what you meant to call my attention to?

A. Yes, sir.

Judge Stephens: Here is another one something like that.

A. Yes, sir.

Judge Stephens: What does that mean?

A. That means it is going to Quartermaster Corps.

Judge Stephens: Where?

A. That is going to Torrey Pines, California.

Mr. Aten: We will offer then these latter seven as our exhibit. I might state that we have no objection to putting in evidence the whole order that we had, for the reason that the portion of the State shipment is so small that we had no objection to it all going before the Court.

Judge Stephens: Yes. And at the suggestion of Judge Beaumont—I think it is correct, and I believe Judge Yank-

wich does not take any particular opposite view point—these may all be attached together, even the three I-handed back to you as one exhibit. But I just wanted to call attention the three I handed back to you are not directed for outside shipment. The rest do. But they may all be admitted for what they are worth as exhibit what—

[fol. 341] The Clerk: Exhibit 11.

Judge Stephens: Now you may attach them and as you refer to them, you may refer to first, second, third or fourth sheet, so you will have a record.

(Documents received in evidence and marked Plaintiff's Exhibit No. 11.)

Q. Mr. Brown, you started to say something about one of these three that were taken out of the group. What was it you wished to say about that?

A. Well there is one there, 115 cases, that we have specific instructions on the back from the Export Department to mark these for the Hawaiian Quartermaster Depot, Honolulu, P. O. 1370-S.

Judge Stephens: That is on the back?

A. Yes.

Judge Stephens: Well then I didn't look at that.

Mr. Aten: Yes. That is all right. I am sorry. I had no opportunity to look at these ahead of time.

Judge Yankwich:

Q. Then, Mr. Brown, as the buyer got ready to take delivery he would send you a shipping instruction or a letter telling you, "Ship a carload on my contract so and so", and you would—I notice some of those he even told you what to put on the car, what label to put on it on one side or the other. Then you immediately—that was a part of your agreement that you would make these deliveries f. o. b. Kerman for the destination which the buyer gave you? Is that the set up? Was that the set up?

A. Yes, sir.

Judge Yankwich: I see. All right.

Mr. Aten:

Q. Would you go through that list then, this last ex-

hibit as quickly as possible designating and telling to the Court what you know about each particular shipment?
[fol. 342] A. The shipment No. 1 was to go — Hudson, Duncan, Longview, Washington.

Judge Stephens: Well that shows on the face of it.

A: Yes, sir.

Judge Stephens: Well I don't see any use repeating it.

Mr. Aten:

Q. If there is anything you know about the shipments other than——

Judge Stephens (Interrupting): Well he knows this mark on the face. But are there any markings that are hieroglyphical or cryptical we don't understand?

Mr. Aten: Very well. I will not pursue that further.

Q. What contract are those orders against, Mr. Brown (handing documents to witness)?

A. These have to do with the West Coast Grower & Packer contract.

Mr. Aten: These are the ones that you examined, Mr. Bowers.

Q. And how many of those are there?

A. 12.

Q. And did you notice, do they all show on their face the point of shipment?

A. They show the lot number, the point of destination and the steamer.

Q. Did you notice, do they all show out of state shipment?

A. Yes, sir.

Mr. Aten: Then we will offer these—the number again were how many?

A. 12, I believe.

Mr. Aten: We offer them all as one exhibit, which will be Exhibit 12, I believe.

The Clerk: Exhibit 12.

Mr. Aten:

Q. Have you another group referring to another contract?

A. No.

Mr. Bowers: And the same objection to this offer for the next exhibit as to the previous exhibits.

[fol. 343] Judge Stephens: Pardon me. I didn't get that.

Mr. Bowers: I say we make the same objection.

Judge Stephens: Oh, yes.

Mr. Bowers: And the same ruling, and our exception to it?

Judge Stephens: Yes. Same ruling.

(Offers received in evidence and marked Plaintiff's Exhibit No. 12.)

Mr. Aten: Just for the information of the Court without—I know it is not a proper question possibly, but renew the question:

Q. What proportion of the entire shipment there, Mr. Brown, was for out of state shipment?

Mr. Bowers: We make the same objection we did before.

Judge Stephens: Well it is just his own summary of what was there, and if he is wrong, it can be corrected. It is just for the present understanding.

Mr. Aten: Yes.

Judge Stephens: You may answer.

A. We shipped 90 per cent of our production out of state.

Judge Stephens: How much per cent?

A. 90 per cent.

Mr. Aten: I believe that is all.

Judge Yankwich: And that applies to that season?

A. Yes, sir.

Judge Stephens: Now is that, what you testified to here, typical of your business as a packer in raisins in the State of California?

A. Is it typical of me or is it typical of all packers?

Judge Stephens: Of your practice?

A. Yes, sir.

Judge Stephens: Do you know what the practice generally is about the state?

A. I think the practice generally is on about the same [fol. 344] proportion.

Judge Stephens: And the same method of handling?

A. Yes, sir.

Judge Stephens: Generally speaking?

A. Yes, sir.

Q. Mr. Brown, these contracts that you just introduced here on papers, orders, covered a certain period of time. During that period of time—well I will ask you first, you did deliver those grapes, those raisins?

A. Our contract—

Judge Beaumont (Interrupting): No. Just answer yes or no.

Judge Stephens: You did deliver those? You did fulfill those orders?

A. I fulfilled the orders having to do with these documents here.

Judge Stephens: Yes. Now during that period of time did you have orders that you did not fill? Can you answer that yes or no?

A. Yes, sir, I had orders that I did not fill.

Judge Stephens: What was the reason for not filling them?

Mr. Bowers: Well I wonder if we may interrupt the Court so as to keep the record of our objections there? I don't like to, your Honor.

Judge Stephens: Oh, that is all right.

Mr. Bowers: But I think this is matter that was gone into at the trial, and the plaintiff introduced his contracts that he had that showed his orders.

Judge Stephens: Well the court was of the opinion, going over the record, that maybe we stopped before he got to the explanation, and we wanted the whole thing. And I can't see any harm. If it is a fact, let's find it out.

Mr. Bowers: Well if the Court is taking additional testi-

mony on that, but what I want to get at then is we should [fol. 345] have the orders, if there are additional orders.

Judge Stephens: Well we are not limiting it.

Mr. Bowers: All right.

Judge Stephens:

Q. Were there some orders that you couldn't fill?

A. Yes, sir.

Judge Stephens: What were they? First I think you better answer the question I put a while ago. Why didn't you fill them?

A. There were only thirty per cent free tonnage of raisins available, and there weren't sufficient raisins to fill our contracts.

Judge Stephens: Where were those raisins to go that you couldn't fill?

A. Where were the ones that I didn't fill?

Judge Stephens: From whom did you have orders that you could not fill?

A. There is a contract I believe here in evidence.

Judge Stephens: In evidence?

A. From Vagin Packing Company.

Judge Stephens: Where are they located? In California?

A. Yes, sir. And I filled part of the contract, and part I couldn't fill.

Judge Stephens: Do you know where those raisins were to go?

A. Yes, sir. They sent us shipping orders.

Judge Yankwich: Are those orders in the record? Were they produced in the trial, do you know?

Mr. Bowers: No, they have not been introduced as yet. The only shipping orders that have been introduced are the ones that have been introduced right here.

Mr. Aten: Were they for out of the state?

A. Some of the orders showed they were cars to be shipped to C. B. Florsheim at Omaha, Nebraska.

Judge Stephens: If the documents aren't found, then there will be no evidence of it.

Mr. Aten: That is the only one you have (indicating). [fol. 346] Well do you have any correspondence or wires or—for shipments direct to the purchaser out of the state with you?

A. I have two letters here that cover a shipment out of the state.

Q. That you made last year?

A. Yes, sir.

Mr. Aten: I would offer in evidence uniform order, bill of lading, shipper No. 711, Southern Pacific Company, purporting to be from the Empire Packing Co. to Ripley, Mississippi, on December 4, 1940.

Judge Stephens: Well he is just helping us instead of having each of us read it at this time. The Empire Company!

A. It is consigned to the order of the Empire Packing Company, Ripley, Mississippi. Notify King Grocery Company, Ripley, Mississippi. Routing, SP, UP, Wabash, M & O.

The Clerk: This will be Plaintiff's Exhibit 13, Mr. Reporter.

(Offer received in evidence and marked Plaintiff's Exhibit No. 13.)

Mr. Aten:

Q. We have here inclosed receipt and delivery order, Dried Fruit Association of California. Empire Packing Company to Abinante & Nola Packing Company, Winona, Minnesota. Is that an order, Mr. Brown, that you shipped direct to the purchaser in Minnesota?

A. Yes, sir.

Mr. Aten: We offer that in evidence as Exhibit 14, is it?

The Clerk: Plaintiff's Exhibit 14.

Mr. Bowers: Same objection.

Judge Stephens: It will be overruled.

(Offer received in evidence and marked Plaintiff's Exhibit 14.)

[fol. 347] Cross-examination.

Mr. Bowers:

Q. Mr. Brown, referring to the Exhibit 10, the shipping orders that you submitted, will you state as to which of these contracts those shipping orders were applied to?

A. Well I don't recall which Exhibit 10 was.

Q. Well—

A. On each of our invoices the—

Q. Showing you Exhibit 10.

A. This one (indicating). The contract number is shown here, and is shown on the contract.

Q. In other words, the contract that you refer to to which the shipping orders evidenced by Exhibit 10 are applicable is the contract with the American Trading Company which is marked Plaintiff's Exhibit No. 9?

A. Yes, sir.

Q. And do these shipping orders that—comprising the Exhibit 10, are all of the orders that you had specifically requesting the delivery or shipping elsewhere?

A. Well I don't understand the question, Mr. Bowers.

Q. Well I mean these shipping orders here do not cover the entire amount of the contract, do they?

A. No, they don't cover the entire contract.

Q. And other than the shipping orders that you have introduced in Exhibit 10, they were the only portions of this contract of Exhibit 9 in which you carried out any instructions from the buyer as to where to deliver the raisins?

A. Well I would like to have that question read.

(Question read.)

A. Well, we delivered all the raisins on that contract.

Mr. Bowers:

Q. Did you have any other instructions with reference to the raisins shown in the contract Exhibit 9, other than the shipping instructions which you have offered here as Exhibit 10?

A. Yes. I had other shipping instructions covering the [fol. 348] total of the contract.

Q. Then do I understand from that that other than as the instructions contained in Exhibit 10 are concerned, whatever other instructions you had did not actually or in your opinion call for the shipment of such raisins outside of the State of California?

A. I believe that they called all for shipment out of the State of California under that contract.

Q. Well then if you have other shipping instructions calling for the delivery outside of the State of California, let's have them. I understood from counsel that he was offering all of the shipping instructions that you had that—

Judge Yankwich: (Interrupting) Wasn't it your understanding that the others are those which Mr. Aten was to get from his own office?

Mr. Bowers: No, your Honor. The ones that Mr. Aten was to get from his office were ones that refer to another contract.

Judge Yankwich: Oh, I see.

Mr. Bowers: I am dealing now only with this particular contract, Exhibit 9. And it was my understanding and I think it was the understanding of all of us here that they were offering here all of the shipping instructions they had which called for delivery of these raisins, at least which called for delivery in their opinion, outside of the state.

Mr. Aten: Well, as far as the offer is concerned, that is correct. As far as I am concerned, that is correct, on which we had delivery made, on which we had delivery actually made. Is that true, Mr. Brown?

A. Well, in getting these orders, I didn't do any book-keeping as to the exact number of the cases. Now I have [fol. 349] brought all of the orders or instructions that were available having to do with this contract.

Judge Yankwich: The question is have you any other instructions which you didn't bring?

A. Well I have another here, your Honor.

Judge Yankwich: Pardon.

A. I have another here, but I think it is a duplication of one of those.

Judge Yankwich: I see. Well aside from that one are there any others that you know of in existence anywhere that you haven't brought into court?

A. None in my file except this one that I have here.

Judge Yankwich: I see. All right,

Mr. Bowers:

Q. Now, Mr. Brown, referring to these instructions on Exhibit 10, were they received by you at approximately

the date or within a few days subsequent to the date that appears on each of the instructions?

A. A day or so following the instructions, yes, sir.

Q. And you had no instructions prior to the receipt of these that you received here?

A. Yes. On some occasions—

Q. I mean with reference here to this contract?

A. Yes. They often phoned regarding it and then followed up with written instructions.

Q. Well now how long prior to the time of those written instructions would you receive any previous notification?

A. Oh, I would say one or two days.

Q. And insofar as this contract Exhibit 9 is concerned under date of May 14, 1940, you had no instructions at all relative to making any particular delivery for the buyer there until sometime in October of that year?

A. Well—

Q. Calling your attention to the fact that the date—that [fol. 350] the dates of these instructions are October 18, 23, November 7, and December 6, 1940.

A. It—our instruction would have been over the telephone a day or so prior to the receiving of the written instruction.

Q. And now did you carry out the instruction in delivering these raisins referred to in Exhibit 10, sheet one to the Port of Stockton?

A. We delivered these raisins for the Lillian Luckenbach steamer for the Port of Stockton on our contract 0908.

Q. And how were those delivered from your plant to the Port of Stockton?

A. By truck.

Q. And do you know what trucking company?

A. Red Line Transportation, an interstate commerce hauler.

Q. Now, you didn't pay for that transportation, did you?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. And you charged that to the buyer here under the in addition to the contract price, did you not?

A. I don't think so. I believe that they agreed to—we paid the hauling and—yes, and billed the buyer for the inland freight.

Q. In other words, whatever the expenditures were of

making a delivery of shipment of any of these raisins which they had contracted for in accordance with later instructions subsequent to the contract, if there was any expense of that paid by you, you billed the buyer for it?

A. We billed the buyer for the inland freight.

Q. Now referring to Exhibit 11, can you tell us to which of these contracts the instructions are applied to?

A. Yes, sir.

Q. And that is—all of the instructions contained in Exhibit 11 refer to the contract Plaintiff's Exhibit No. 8?

A. Yes, sir.

Q. Now in order to shorten the time here, Mr. Brown, would your statements of the manner in which this was handled and the connection between the shipping instructions and the contract be the same as between these instructions and the contract Exhibit 8 as you have stated it with reference to the instructions under Plaintiff's Exhibit 10 and contract Exhibit 9?

A. I believe not. Some of those were interstate shipments by rail, and where they went by rail the buyer pays the freight charges on the other end.

Q. And whatever charges were made in fulfilling the shipping instructions under your Exhibit 11, they were either paid by the buyer direct or you paid them and charged them to the buyer in addition to any of the contract price?

A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

Q. And likewise insofar as you know the instructions contained in Exhibit 11 are all that you have that so far as you have any knowledge ultimately went outside of the state?

A. Yes, sir.

Q. Now referring to the instructions in your Exhibit 12, can you state to which of these contracts those instructions are applicable?

A. This one here (indicating).

Q. So that the instructions contained in your Exhibit 12 are all applicable to the contract marked as Plaintiff's Exhibit No. 3?

A. Yes, sir.

Q. And those instructions likewise are all of the instructions that you have in regard to that contract that you know of that were destined in any way for outside of this state?

A. Yes, sir.

[fol. 352] Q. And likewise in filling those instructions any additional charges, transportation and so forth, were either paid by the buyer direct or if paid by you they were charged by you to the buyer as additional charges in filling out the instructions over and above the contract?

A. Yes, sir.

Q. And likewise all of these instructions were received by you on or within a few days subsequent to the dates they bear, and if there were any telephone or verbal instructions other than those, they were instructions which these written instructions confirmed within a few days?

A. I believe so, yes, sir.

Q. None of these instructions were given to you at any time at the time that the original contracts were made?

A. I don't recall any of them being given to me at the time the contract was made.

Mr. Aten: If the Court please, there are eight of these orders on the Vagin contract that were filled, and under the stipulation of counsel we would like to have them introduced in evidence, but not actually leave the documents here. We will arrange to exhibit the originals to them with a summary of them and they will be available for use all the time, and can be had if necessary, and I might say that of the eight four, or about half of the shipments, is out of the state and half is in the state.

Mr. Bowers: I would like to ask one question of Mr. Brown, if I may.

Q. Mr. Brown, in regard to these orders and shipping instructions that you received subsequently, it is a fact, is it not, that they were sent out to fill orders which your buyer had received for the raisins, and that they were dis-[fols. 353-354] posed of by the American Trading Company and the other buyers to whom you sold them, to someone else?

A. Well we shipped them to the point of destination furnished by the American Trading Company.

Q. Yes. And you knew that that was to fulfill orders which the American Trading Company had received from those points?

A. On the American Trading Company contracts, yes.

Q. And that is true of practically all of them, all the shipping orders, regardless of American Trading Company or the West Coast or any of the other contracts, was it not?

A. No. We testified that we shipped some of those direct to the buyers, and furnished the documents showing we did ship some of them direct.

Q. Some of them?

A. Yes.

Q. But I say the principal ones, practically the bulk of them, were sent out to fill the orders which your buyers had received?

A. I believe that information is contained in the document there.

Q. Well, that is a fact, isn't it? You are familiar with those documents and you are familiar with the practice, aren't you?

A. Yes, sir.

Q. And that is a fact, isn't it?

A. Yes.

[fol. 355] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION
OF THE PARTS OF THE RECORD TO BE PRINTED—Filed March
25, 1942

Come now the appellants, and each of them, in the above entitled cause and in support of their appeal hereby file their definite statement of the points on which they intend to rely and hereby states such points to be as follows:

That the District Court of the United States, in and for the Southern District of California, Northern Division, and the special three-judge court organized and sitting therein erred:

[fol. 355-1] 1. In finding and holding that the court has jurisdiction of this cause and in failing to dismiss this action for lack of jurisdiction.

2. In finding and holding that plaintiff (appellee) has not been guilty of laches and is not estopped to question the

constitutionality of the seasonal proration program for raisins herein mentioned.

3. In finding and holding that the seasonal marketing program for raisins for 1940-41 adopted pursuant to the provisions of the Agricultural Prorate Act of the State of California as amended, constitutes and is a direct, substantial, illegal and unconstitutional interference with interstate and foreign commerce in wholesome and sound raisins.

4. In finding and holding that plaintiff (appellee) is entitled to an injunction permanently enjoining, and in permanently enjoining, defendants (appellants) from enforcing or attempting to enforce, or attempting to procure the enforcement in any manner of said seasonal marketing program for raisins against plaintiff (appellee) or anyone dealing with him in his capacity as a producer, buyer, packer or handler of wholesome and sound raisins, and enjoining defendants (appellants) from in any manner annoying, harassing, or molesting plaintiff (appellee) or persons doing such business with him.

5. In failing to specify whether the matters found in [fol. 355-2] paragraph I of the Findings of Fact were, or occurred in connection with, interstate or intrastate transactions and in denying defendants' (appellants') request for such specification and in denying the request and in failing to expressly find that all of such penalties and all of the business and all of the damage set forth and mentioned in said paragraph I were solely and wholly intrastate.

6. In finding in paragraph I of the Findings that defendants (appellants) "have directly interfered with and obstructed plaintiff's said business and thereby damaged the plaintiff in a sum in excess of \$3,000.00," contrary to the evidence introduced and in the absence of any issue or pleading to that effect.

7. In finding in paragraph VI of the Findings of Fact "That 90% to 95% of the naturally dried raisins consumed in the United States are produced in said zone" and in denying the request of defendants to eliminate such statement, and in further finding in said paragraph "that 90% to 95% of such raisins produced in said zone are consumed

outside the State of California", and in denying the request of defendants to change such statement to read in conformity to the stipulation of facts that "such raisins are ultimately consumed both within and without the State of California, but 90% to 95% of the raisins consumed as raisins, and for human consumption, are ultimately consumed outside of the State of California."

[fol. 355-3] 8. In finding in paragraph VIII of the Findings of Fact that "Such process is entirely accomplished on the premises where the grapes are grown, and when properly done, the grapes have been entirely dried and cured and are a wholesome food and sound article of commerce. They are then substantially ready for market as raisins. The process of cleaning, stemming, cap-stemming, seeding (muscats only), grading, sorting and packaging in various sized containers, which is not uniform in packing plants, tends to make the raisins more desirable commercially and thus create a greater demand for them in the market, but is not essential to production," and in overruling the objections of the defendants (appellants) thereto and in denying their request to substitute therefor a statement that "Such process is sometimes completed on the premises where the grapes are grown and sometimes after they have been delivered to the premises of the packers; that when so delivered to the packers they have not been subjected to any cleaning or other treatment and are in clusters attached to the dried stems upon which they mature except such as have fallen from such stems and generally still have attached a portion of the stem and when received by the packer from the producer in such condition they are edible but are not the subject of trade or commerce and are not marketable except in the transaction between the producer and packer and are never sold in such condition [fol. 355-4] to the trade or to consumers."

9. In making each and all of the findings set forth in paragraph X of the Findings of Fact herein and in overruling the objection of defendants (appellants) thereto.

10. In finding and holding that the said seasonal marketing program for 1940-41 and the enforcement thereof by defendants directly and substantially interferes with and burdens and prevents the free flow of interstate commerce.

11. In holding that such seasonal marketing program for raisins is not based upon the protection of the industry through exclusion from the market of physically and economically unfit raisins.

12. In holding and ruling that such seasonal marketing program is not a regulation of proper conditioning and preparation for market of the raisins and of their movement from the producer into a primary channel of trade prior to their being offered to the consumer.

13. In holding and ruling that the purpose and necessary effect of such seasonal marketing program for raisins is to place a controlled embargo on the raisin production of the State.

14. In holding and ruling that such seasonal marketing program is simply a means of controlling the supply of raisins into interstate trade channels.

[fol. 355-5] 15. In holding and ruling that any regulation of the amount of wholesome or sound raisins which may be produced, harvested and/or prepared for market and moved from the producer into the primary channels of trade in accordance with and in the amount and at the times that the available market will absorb the same, constitutes a direct burden upon and an obstruction of interstate commerce.

And appellants further state that only the following parts of the record as filed in this court are necessary for the consideration and need be printed by the Clerk for the hearing of the cause:

Title of Paper	Record Page
Amended Complaint	78
Answer to First Amended Complaint (omitting Exhibit "A" thereof)	108
Stipulation as to Certain Facts	162
Letter of Walter L. Bowers to court	174
Findings of Fact and Conclusions of Law	189
Final Judgment	202
Statement of Evidence	231-292, both inclusive
[fol. 355-6] Statement of Evidence, beginning with words "Redirect examination", page 297, to and including the word "Yes" on line 28, page 305	297-305

Statement of Evidence, page 310, line 27, beginning with the words "What about the practice" to and including page 317	310-317
Statement of Evidence beginning with words "William N. Keeler" line 13, page 319, to and including line 13, page 323, with the words "It has been a distribution problem largely, yes."	319-323
Order for Transmittal of Original Exhibits	225

Earl Warren, Attorney General of the State of California; Walter L. Bowers, W. R. Augustine, Gilbert F. Nelson, Deputies Attorney General; Strother P. Walton, Attorneys for Appellants.

[fol. 355-7] Receipt of copy of the foregoing Statement Of Points To Be Relied Upon And Designation Of The Parts Of The Record To Be Printed is hereby acknowledged this 21st day of March, 1942.

Aten & Aten, and G. L. Aynesworth, By Richard V. Aten, Attorneys for Appellee.

[fol. 355-8] [File endorsement omitted.]

[fol. 356] IN SUPREME COURT OF THE UNITED STATES

STIPULATION IN RE PRINTING OF RECORD—Filed March 25, 1942

It Is Hereby Stipulated by and between the above named appellants and appellee, through their respective counsel of record herein, that

Whereas, the "Marketing Program for Raisins, as Amended" issued July 23, 1940, and set forth as Exhibit "A" of the Answer to First Amended Complaint herein is printed in full in the appellants' Jurisdictional Statement on Appeal filed herein; that the same need not be reprinted in the record on appeal herein but that wherever in such [fol. 356-1] record the said Marketing Program appears reference may be made thereto and the fact noted that the same appears in full in said appellants' Jurisdictional Statement on Appeal as Exhibit 1 thereof, or in such other manner as the Clerk of the above entitled court may designate.

Dated: March 21, 1942.

Earl Warren, Attorney General of the State of California; Walter L. Bowers, W. R. Augustine, Gilbert F. Nelson, Deputies Attorney General; Strother P. Walton, Attorneys for Appellants. Aten & Aten, and G. L. Aynesworth, By Irvine P. Aten, Attorneys for Appellee.

[fol. 356-2] [File endorsement omitted.]

[fol. 357] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED
—Filed March 30, 1942

To the Clerk of the above entitled Court:

Appellee thinks that those portions of the Statement of Evidence which are omitted in the designation filed by Appellants are material and requests that those portions of the evidence be printed.

Dated: March 28, 1942.

Christian M. Ozias, G. L. Aynesworth, Irvine P. Aten,
Richard V. Aten, Attorneys for Appellee.

[fol. 357-1] [File endorsement omitted.]

[fol. 358] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1941

No. 1040

ORDER NOTING PROBABLE JURISDICTION—April 6, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: Enter Earl Warren. File No. 46,368, S. California, D. C. U. S., Term No. 1040. W. B. Parker, Director of Agriculture, Agricultural Prorate Advisory Commission, Raisin Proration Zone No. 1, et al., Appellants, vs. Porter L. Brown. Filed March 13, 1942. Term No. 1040 O. T. 1941.

FILE COPY

Office of the Supreme Court
FILED

MAR 13 1942

STATES

CHARLES E. BROWN

SUPREME COURT OF THE UNITED

OCTOBER TERM, 1941

No. 1040 46

W. B. PARKER, DIRECTOR OF AGRICULTURE, AGRI-
CULTURAL PRORATE ADVISORY COMMISSION,
RAISIN PRORATION ZONE NO. 1, ET AL.,

Appellants,

vs.

PORTER L. BROWN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

EARL WARREN,

Attorney General of California;

WALTER BOWERS,

W. R. AUGUSTINE,

GILBERT F. NELSON,

Deputy Attorneys General;

STROTHER P. WALTON,

Counsel for Appellants.

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STATUTES CITED.

Agricultural Prorate Act of California, being Chapter 754, pages 1969, et seq., Statutes of 1933 of the State of California, as amended by Chapters 471, pages 1526, et seq., and 743, pages 2087, et seq., Statutes of 1935; and further amended by Chapter 6, pages 7, et seq., Statutes of 1937, containing statutes of extra session of 1938; and again amended by Chapters 363, pages 1702, et seq., 548, pages 1947, et seq., and 894, pages 2485, et seq., of Statutes of 1939; and further amended by Chapters 603, pages 2050, et seq., 1150, pages 2858, et seq., and 1186, pages 2943, et seq., Statutes of 1941

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA,
NORTHERN DIVISION

Civil No. 78

PORTER L. BROWN,

Plaintiff,

vs.

W. B. PARKER, DIRECTOR OF AGRICULTURE, ET AL.,

Defendants.

**APPELLANTS' JURISDICTIONAL STATEMENT ON
APPEAL.**

*To the Honorable Judges of the Above Entitled District
Court of the United States:*

The defendants and appellants herein, W. B. Parker, Director of Agriculture, Agricultural Prorate Advisory Commission, Raisin Proration Zone No. 1, Program Committee, W. B. Parker, Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, Preston McKinney, H. C. Anderson, A. K. Kelly, Renald Mastrosini, Alex. Berg, Mesrob Mirigian, Melchior Hansen, A. L. Davidson, W. J. Cecil and J. C. Harlan, and each of them, in support of the jurisdiction of the Supreme Court of the United States to review

the above-entitled cause and the final decree and permanent injunction therein on appeal, and particularly disclosing the basis therefor, respectfully represent:

(a) That the statutory provisions believed to sustain such jurisdiction are Section 345 of Title 28 of the United States Code Annotated (Judicial Code, Sec. 238, as amended), and particularly the portion thereof reading as follows:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following sections or parts of sections and not otherwise:

"(3) Section 380 of this Title."

and Section 380, Title 28 of the United States Code Annotated (Judicial Code, Section 266, as amended), and particularly the last clause thereof reading:

"And a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

(b) That the statute of the State of California, the validity of which is involved, is known as the Agricultural Pro-rate Act, being Chapter 754, pages 1969, *et seq.*, Statutes of 1933 of the State of California, as amended by Chapters 471, pages 1526, *et seq.*, and 743, pages 2087, *et seq.*, Statutes of 1935; and further amended by Chapter 6, pages 7, *et seq.*, Statutes of 1937, containing statutes of extra session of 1938; and again amended by Chapters 363, pages 1702, *et seq.*, 548, pages 1947, *et seq.*, and 894, pages 2485, *et seq.*, of Statutes of 1939; and further amended by Chapters 603, pages 2050, *et seq.*, 1150, pages 2858, *et seq.*, and 1186, pages 2943, *et seq.*, Statutes of 1941.

That a verbatim copy of the Marketing Program for Raisins, as amended, effective July 23, 1940, approved and

formulated under and in accordance with the said Agricultural Prorate Act, is attached hereto, marked Exhibit 1, hereby referred to, and made a part hereof.

That the essential features of the 1940-1941 Seasonal Proration Program for Raisins, sometimes known as the Seasonal Marketing Program for Raisins, approved and formulated under and in accordance with the said Agricultural Prorate Act and the said Marketing Program for Raisins, as amended, as set forth in Exhibit 1, are as follows:

1. That 20% by variety of all "standard" raisins of the 1940 crop produced within the Zone shall be delivered by the producers into a surplus pool; and that an advance shall be made to producers on such raisins at the time of delivery by such producers of \$27.50 per ton for Muscat and Thompson Seedless raisins, and \$25.00 per ton for Sultanas, to be obtained from the proceeds of a non-recourse loan from Commodity Credit Corporation.

2. That 50% by variety of all such "standard" raisins shall be delivered into a stabilization pool; and that an advance shall be made to producers upon such raisins at the time of delivery by such producers of \$55.00 per ton for Muscat and Thompson Seedless raisins, and \$50.00 per ton for Sultanas, to be obtained from the proceeds of said non-recourse loan from Commodity Credit Corporation.

3. That the balance of such standard raisins, to wit, 30% of each producer's standard raisins, may be disposed of by him without restriction into a primary channel of trade as "free tonnage", provided he has obtained a secondary certificate therefor, which certificate is issued to him when he has satisfied the pool requirements and upon payment of the certificate fee of \$2.50 per ton for each ton of the "free tonnage" (30% of his 1940 production of "standard" raisins):

4. That no "sub-standard" or "inferior" grade raisins may be offered as "free tonnage" or delivered to the surplus or stabilization pools, but that such raisins shall be delivered into separate pools for disposal by the Program Committee at the best prices and under the fairest conditions obtainable for by-product purposes, and that the net proceeds thereof shall be distributed ratably to the producers contributing to such pools.

(c) That the date of the final decree and permanent injunction sought to be reviewed is December 4, 1941, and that the date upon which the application for appeal herein is presented is December 26th, 1941.

(d) That the nature of the above entitled case was an application for an interlocutory and for a permanent injunction restraining the defendants and appellants herein, as the duly constituted officers of the State of California, from the enforcement and execution of any of the provisions of the said Seasonal Proportion Program for Raisins for 1940-41, instituted and formulated under and in accordance with the Marketing Program for Raisins, as amended, effective July 23, 1940, set forth in Exhibit 1 hereof, and under and in accordance with the provisions of the Agricultural Prorate Act, being Chapter 754, Statutes of 1933 of the State of California, and any and all amendments thereto; and to declare each and all of such provisions invalid, void, and of no effect as being contrary to and in violation of Section 8 of Article I of the Constitution of the United States.

That upon the hearing of the application for such interlocutory injunction, the duly constituted three-judge court denied such application and directed the case to be set for trial on its merits at as early a date as the court calendar would permit.

That after the trial of said action the said three-judge court made and entered its findings of fact and conclusions of law and its final decree and permanent injunction enjoining these defendants and appellants as duly constituted officers of the State of California from enforcing against plaintiff any and all of the provisions of said 1940-1941 Seasonal Proration Program for Raisins as to wholesome and sound raisins but not as to unwholesome and unsound or inferior raisins, and from in any manner annoying, harassing, or molesting plaintiff or persons doing any such business with plaintiff, upon the grounds that the great bulk of such raisins consumed as raisins for human consumption are ultimately so consumed outside of the State of California and that the regulation and control of the amount of such raisins which might be prepared for market and moved into the primary channels of trade intrastate places an embargo upon the subsequent transportation of the same out of the State and constitutes a direct regulation of interstate commerce and is a direct burden and obstruction thereto in violation of Article I, Section 8 of the Constitution of the United States.

(e) That the cases believed to sustain the jurisdiction of this appeal are as follows:

Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.,
292 U. S. 386, 390, 54 S. Ct. 732, 734, 78 L. Ed. 1318;

Stratton v. St. Louis S. W. Ry. Co., 292 U. S. 10, 51
S. Ct. 8, 75 L. Ed. 135;

Brucker v. Fisher (6 C. C. A. Mich. 1931), 49 F. (2d)
759;

Eichholz v. Public Service Commission of Missouri,
306 U. S. 268, 59 S. Ct. 532, 83 L. Ed. 641.

(f) That appended hereto, marked Exhibit 2, is a copy of the opinion delivered by the duly constituted three-judge

court herein upon the rendering of the final decree from which this appeal is taken.. (39 Fed. Supp. 895.)

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of said Section 345, Title 28 of the United States Code Annotated (Judicial Code, Sec. 238, as amended) and Section 380, Title 28 of the United States Code Annotated (Judicial Code, Sec. 266, as amended).

Respectfully submitted,

EARL WARREN,
*Attorney General of the
State of California.*

By WALTER BOWERS,

By W. R. AUGUSTINE,

By GILBERT F. NELSON,

Deputies Attorney General.

STROTHER P. WALTON,

Attorneys for Defendants and Appellants.

7
EXHIBIT 11137

**DEPARTMENT OF AGRICULTURE
STATE OF CALIFORNIA**

Marketing Program for Raisins, as Amended



Issued July 23, 1940

THE UNIVERSITY OF CHICAGO
LIBRARY



Marketing Program For Raisins, As Amended

ARTICLE I

DEFINITIONS

SECTION 1. Definition of Terms. As used in this Marketing Program, as amended:

(a) **"Raisins"** means unbleached sun-dried or partially sun-dried grapes of the Thompson Seedless, Sultana, and Muscat varieties, grown in the Zone.

(b) **"Zone"** means Raisin Proration Zone No. 1 which was established August 3, 1937, pursuant to proceedings initiated under the Act, and which includes an area composed of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and Kern Counties in the State of California.

(c) **"Person"** means any individual, firm, association or corporation.

(d) **"Commission"** means the Agricultural Prorate Advisory Commission established pursuant to the Act.

(e) **"Committee"** means the Proration Program Committee selected and appointed for Raisin Proration Zone No. 1 pursuant to the provisions of the Act.

(f) **"Director"** means the Director of Agriculture of the State of California, and includes any authorized agent of the Director.

(g) **"Zone Agent"** means the agent appointed by the Committee, subject to the approval of the Director, to administer this Marketing Program, as amended, at the direction of the Committee.

(h) **"Act"** means the Agricultural Prorate Act, being Chapter 754, Statutes of 1933, as amended.

(i) **"Producer"** means any person situated within the Zone and engaged in the business of commercially producing raisins for commercial use from at least one acre of grapes of the Thompson Seedless, Sultana, and Muscat varieties.

(j) **"Handler"** means any person who receives raisins from the producer thereof for the purpose of cleaning, sorting, stemming, seedling, packing, marketing and/or distributing the same.

(k) **"Primary Channel of Trade"** means the transaction in which the producer or his cooperative marketing association loses physical possession of raisins through the sale thereof or other disposition commercially.

(l) **"Production"** means the total tonnage of standard and substandard raisins produced and the equivalent raisin tonnage of grapes which are green diverted in the Zone in any marketing season.

(m) **"Normal Marketing Channels"** means those merchandising channels through which handlers customarily dispose of raisins for human consumption as raisins.

(n) **"Standard Raisins"** means raisins of a quality or grade which is equal to, or better than, the quality or grade for standard raisins as determined by the Committee pursuant to Article X hereof.

(o) **"Substandard Raisins"** means raisins of a quality or grade below the quality or grade established by the Committee for standard raisins, pursuant to Article X hereof, but which are not inferior raisins.

(p) **"Inferior Raisins"** means raisins which are unfit for human consumption, as defined in the Pure Food and Drug Act of the United States of America, as now in force or as hereafter amended.

(q) **"Inferior Raisin Pool"** means the pool established by the Committee pursuant to Article IV hereof and into which all inferior raisins shall be delivered by the producers thereof or their agents.

(r) **"Surplus Percentage," "Surplus Requirement," and "Surplus Pool":**

(1) **"Surplus Percentage"** means that percentage of the standard and substandard raisin crop of the current marketing season which the Committee recommends and the Director approves for elimination or diversion from normal marketing channels, pursuant to this Marketing Program, as amended.

(2) **"Surplus Requirement"** means the obligation on the part of each producer to deliver into the surplus pool established by the Committee all of his substandard raisins, together with such additional tonnage of standard quality raisins, if any, which is required to make such deliveries equal to the tonnage derived by applying the surplus percentage to such producer's standard and substandard raisin crop, or the obligation of each such producer to eliminate part or all of the surplus percentage of his raisin crop through green diversion, whichever method or combination of methods shall be approved by the Committee for each such producer, pursuant to this Marketing Program, as amended.

(3) **"Surplus Pool"** means the pool established by the Committee pursuant to Article V hereof in connection with the surplus requirement of each producer and into which producers shall deliver raisins in fulfillment of such surplus requirement, excepting only those raisins for which the corresponding surplus requirement has,

either in whole or in part, been fulfilled by green diversion pursuant to Article VII hereof.

(s) **"Stabilization Percentage," "Stabilization Requirement," and "Stabilization Pool":**

(1) **"Stabilization Percentage"** means that percentage of the standard quality raisin crop of the current marketing season which the Committee recommends, and the Director approves, shall be temporarily withheld from normal marketing channels, pursuant to this Marketing Program, as amended.

(2) **"Stabilization Requirement"** means the obligation on the part of each producer to deliver into the stabilization pool the stabilization percentage of his standard quality raisins other than the standard quality raisins which such producer has delivered into the surplus pool, or the obligation of each such producer to eliminate part or all of the stabilization percentage of his raisin crop through green diversion, whichever method or combination of methods shall be approved by the Committee for each such producer, pursuant to this Marketing Program, as amended.

(3) **"Stabilization Pool"** means the pool established by the Committee pursuant to Article VI hereof and into which producers shall deliver standard quality raisins in fulfillment of their respective stabilization requirements excepting only those raisins for which the corresponding stabilization requirement has been fulfilled, either in whole or in part, by green diversion pursuant to Article VII hereof.

(t) **"Salable Percentage"** means that percentage of the Standard quality raisin crop of the current marketing season which the Committee recommends and the Director approves for marketing and delivering into the primary channels of trade by producers on their own account, pursuant to this Marketing Program, as amended..

(u) **"Salable or Certificated Tonnage"** means the tonnage of standard quality raisins of each producer obtained by multiplying the sum of such producer's total production of standard quality raisins, other than the tonnage of such raisins used to fulfill the surplus requirement of such producer, and the equivalent raisin tonnage of grapes certified as green diversion by such producer in any marketing season by the salable percentage established pursuant to this Marketing Program, as amended, and which tonnage such producer may market freely in the primary channels of trade to any person without restriction by the terms of this Marketing Program, as amended, other than the payment of such fees and assessments as may be levied pursuant to Articles VIII and XI hereof.

(v) **"Uncertificated Tonnage"** means all inferior raisins and the tonnage of raisins of each producer which, pursuant to this Marketing Program, as amended, the Committee has caused to be placed in a surplus and/or a stabilization pool and for which secondary certificates have not been issued, and shall include all substandard raisins.

(w) **"Green Diversion"** means the picking or clipping of grapes from the vines and disposing of them at the farm where grown, under Committee supervision, in such manner as to preclude the recovery of such grapes for any commercial use, pursuant to Article VII hereof.

(x) **"Marketing Season"** means the period of June 1 of any calendar year to and inclusive of May 31 of the following calendar year.

ARTICLE II

RAISIN PRORATION PROGRAM COMMITTEE

SECTION 1. Raisin Proration Program Committee. In accordance with the provisions of the Act, the Committee shall be the administrative agency established for the purpose of directing the policies and activities of the Zone, within the provisions of this Marketing Program, as amended, and subject to the approval of the Director. The term of office of said Committee shall be a period of two years as provided in the Act.

SEC. 2. Selection and Appointment of Members. Pursuant to Sections 15 and 18 of the Act, the Director shall divide the Zone into as many districts, not exceeding seven (7), as may appear convenient or necessary and allot to each district the number of producers therefrom who may serve upon the Committee. The Director shall thereupon call a meeting of producers in each district at which meeting producers shall elect persons eligible to serve on the Committee. Election shall be by secret ballot after nominations from the floor. Not less than three (3) eligible persons shall be elected for each producer member of the Committee allotted to the district. At such election each registered producer in attendance shall be entitled to one vote, and voting by proxy shall not be permitted. All eligible persons elected in each district shall be registered producers within the district. In the event a corporation or a partnership is a registered producer it may designate a representative who may be a nominee. From the eligible lists of producers elected in such districts, the Director shall, subject to the approval of the Commission, select and appoint seven (7) members to serve on the Committee and one (1) alternate for each such appointment. Each district in the Zone shall be entitled to at least one (1) member on the Committee. The Director may also, if requested by the seven (7) producer members of the Committee and approved by the Commission, appoint, in addition to the producer members, two (2) handler members and their respective alternates to the Committee.

SEC. 3. Vacancies. Vacancies on the Committee occasioned by the expiration of term, death, or resignation of any member, or by removal for incompetence or inattention or neglect of duties as a member of the Committee by the Director, with the approval of the Commission, or by a member ceasing to qualify as a producer or handler of raisins, shall be filled in the same manner as the original appointments were made.

SEC. 4. Organization. (a) The Committee shall select a chairman, vice-chairman, secretary, and such other officers as may be required and may adopt such rules as may be necessary or proper for the conduct of its meetings and its business, subject to the provisions of this Marketing Program, as amended. Registered producers may attend regular meetings of the Committee; *provided, however*, that the Committee may hold closed executive meetings if the holding of each such meeting is first approved by the Director.

(b) The Committee shall not transact any business or take any actions unless there be present at a duly called meeting thereof not less than a quorum of its members. A quorum is hereby defined as consisting of six (6) members if two (2) handler members have been appointed, and five (5) members if two (2) handler members have not been appointed to said Committee.

(c) The Committee shall not perform any of its duties or exercise any of the powers herein granted while there are more than two (2) vacancies in its membership. Headquarters of the Committee and of the Zone shall be in the City of Fresno, California.

SEC. 5. Duties of the Committee. Subject to the limitations established by the Act and to the approval of the Director, the Raisin Proration Program Committee shall have power and it shall be its duty:

(a) To administer this Marketing Program, as amended, in the best interests of all raisin producers.

(b) To recommend to the Director the seasonal marketing program required by Article III hereof, together with administrative rules and regulations and the budgets relating thereto.

(c) To keep minute books, records, and accounts which will clearly reflect all of its acts and transactions and which minute books, records, and accounts shall at any time be subject to the examination of the Director. The regular minute book of the Committee shall be open to the inspection of any registered producer.

(d) To assist the Director in the collection of such necessary information and data as the Director may deem necessary to the proper administration of this Marketing Program, as amended.

(e) To assess and collect the funds necessary to cover the expenses incurred in the administration of this Marketing Program, as amended.

(f) To receive complaints of and to investigate and report to the Director any violations of this Marketing Program, as amended.

(g) To perform such other duties in connection with the administration of this Marketing Program, as amended, as may from time to time be assigned to it by the Director in order to properly effectuate the declared purposes of the Act within the standards and subject to the limitations and restrictions thereof.

SEC. 6. Authorization to Engage Employees. (a) The Committee shall appoint a Zone Agent, subject to the approval of the Direc-

tor, who shall administer this Marketing Program, as amended, under the direction of the Committee and who may be removed from office in the same manner as he was appointed. The salary or compensation of said Zone Agent shall be fixed by the Committee subject to the approval of the Director.

(b) The Zone Agent shall appoint such deputy agents and other assistants as may be necessary to direct this Marketing Program, as amended, which appointments shall be subject to the approval of the Committee.

SEC. 7. Limitation of Liability of Members of the Committee. No member or alternate member of the Committee nor any employee thereof shall be held liable individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member or employee, except for acts of dishonesty.

ARTICLE III

DETERMINATION OF METHOD, MANNER AND EXTENT OF PRORATION

SECTION 1. Determination of Marketing Situation. The Committee shall submit annually, not later than July 15th, for the approval of the Director, a detailed report based upon the most recent data available from the State Department of Agriculture and other reliable sources, which report shall have been assented to by at least five (5) members if the Committee is comprised of seven (7) members or by six (6) members if the Committee is comprised of nine (9) members and which shall set forth the findings of the Committee with respect to the following economic factors:

(a) Estimated carry-over of raisins as of August 31st of the current marketing season.

(b) Estimated tonnage of grapes to be available during the current marketing season for utilization in the fresh, crushing, and drying outlets, respectively.

(c) Estimated tonnage of raisins which will be produced during the current marketing season.

(d) Estimated total supply of raisins to be available during the current marketing season.

(e) The indicated annual disappearance of raisins into normal trade channels for each of the preceding five marketing seasons.

(f) Estimated disappearance of raisins into normal trade channels during the current marketing season.

(g) The tonnage of raisins which will be required to provide a normal merchandising carry-over as of the end of the current marketing season.

(h) Estimated surplus tonnage of raisins for the current marketing season.

(i) Surplus percentage.

(j) Stabilization percentage.

(k) Salable percentage.

(l) Such other facts or factors as may be pertinent.

In the report so made, all raisin tonnage data shall be segregated as to bleached and unbleached raisins; disappearance data shall be further segregated as to domestic and foreign outlets; and carry-over data shall in addition be segregated as to the estimated quantities held by producers and handlers, respectively. Data upon which any of the foregoing estimates are based, in whole or in part, shall be submitted in support of and as a part of such annual report.

SEC. 2. Recommendation of Seasonal Marketing Program. Upon the basis of the findings required by Section 1 of this Article III, the Committee shall recommend annually to the Director on or before August 1st a seasonal marketing program, together with any trade stimulation program which may be contemplated for the current marketing season. The resolution by means of which such seasonal program is recommended to the Director shall have been assented to by at least five (5) members if the Committee is comprised of seven (7) members, or by six (6) members if the Committee is comprised of nine (9) members. Such program shall be in accordance with all provisions of this Marketing Program, as amended, and shall include the following:

(a) The marketing policy for the marketing season as a whole.

(b) The salable, stabilization, and surplus percentages for the current marketing season, if applicable.

(c) The procedure and rules and regulations to be followed in carrying out such seasonal marketing program.

(d) The general plans of the Committee relative to an equalization assessment, if any, and the financing of inferior, surplus, and stabilization pools and the pledging of the products contained in any of such pools for the current marketing season.

(e) Such other factors as may be pertinent to the seasonal program, including the budgets and recommended certificate fees and deductions from any advances to producers for pool tonnage.

SEC. 3. Approval of Seasonal Marketing Program by Director. If the Director finds that the recommended seasonal marketing program, together with such trade stimulation activities as may be recommended, will provide such supply of raisins as is necessary to fulfill the normal requirements of consumers thereof, considering the inventory of raisins held by handlers, by producers, and by or for the Committee, and that such plans are in accordance with this Marketing Program, as amended, and will tend to effectuate the declared purposes of the Act within the standards and subject to the limitations and restrictions

of said Act; and if the Director finds, upon the basis of a referendum by mail ballot sent to all producers of record with the Department, that a majority or more of the qualified producers voting in such referendum approve such seasonal marketing program, he shall approve and declare effective such plans for the current marketing season; *provided, however*, that the Committee may recommend and the Director may approve changes or modifications in such plans not later than August 15 of the current marketing season, subject to the limitations set forth in this Section, including the holding of a referendum. The Director shall establish the rules and regulations under which such referendum shall be conducted.

SEC. 4. Preliminary Report in Event of Green Diversion. If the Committee contemplates a green diversion plan in any marketing season, pursuant to Article VII hereof, it shall, prior to June 15 of such marketing season, submit to the Director for his approval a preliminary report as nearly comparable as is possible to that described in Section 1 of this Article, considering the difference in dates and the availability of the basic economic data. A program of green diversion may be established and conducted by the Committee, with the approval of the Director, and without the holding of a referendum.

SEC. 5. Season of 1940 Excepted from Certain Dates. Any provisions of this Marketing Program, as amended, notwithstanding, the several dates set forth in the preceding Sections of this Article shall not be applicable to the marketing season beginning June 1, 1940; *provided, however*, that any program to be effective for such season shall have been approved and declared effective by the Director not later than September 15, 1940.

ARTICLE IV

INFERIOR RAISIN POOL

SECTION 1. Inferior Raisin Pool. The Committee is hereby authorized to and it shall establish and maintain a pool of inferior raisins into which there shall be delivered and received all of each producer's inferior raisins.

SEC. 2. Facilities for Inferior Raisin Pool. The Committee may, with the prior approval of the Director, contract for or create, establish, or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market, and disposal of the contents of a pool of inferior raisins in such manner as to maintain stability in the markets and to dispose of such inferior raisins and any products derived therefrom.

SEC. 3. Pledging of Inferior Raisin Pool. The Committee or any agency thereof, with the prior approval of the Director, and upon securing title to the contents of a pool of inferior raisins, may pledge such raisins in order to finance such pool, subject to the provisions of this Marketing Program, as amended. The provisions of any such loan agreement shall take precedence over the provisions of this Article

with reference to the date on or before which the disposition of inferior raisins shall be completed.

SEC. 4. Disposal of Inferior Raisin Pool. Pursuant to this Section 4, the Committee shall sell or authorize the sale of inferior pool raisins as soon as practicable after delivery of same to the Committee or to any agency authorized by the Committee to receive such raisins. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins.

Inferior pool raisins shall be sold only for assured by-product and other diversion purposes, and shall not in any instance be sold into normal marketing channels; *provided, however*, that any sale or sales of inferior raisins for distillation shall be made only with the prior approval of the Director and then only if the surplus pool no longer contains any standard raisins and if such sales are at prices equivalent to average prices paid by vintners during the current marketing season for wine grapes of similar variety and quality. The Committee shall adopt and use such methods and procedure as it deems proper to satisfy itself that the conditions of this Section are fulfilled. A bond, penalty, or other financial guarantee as the Committee may require shall be given to insure proper performance of the provisions of this Article by each person receiving inferior raisins from the Committee or its agent.

All of the raisins held in an inferior raisin pool shall be sold or otherwise disposed of on or before May 31 of the marketing season in which such pool is established.

SEC. 5. Interest of Producers in Holdings of the Committee.

(a) **Accountability.** The Committee shall conduct its affairs in such manner that the details of each seasonal marketing program will be completed and final returns and settlement with respect to inferior raisins made to all producers within the shortest period of time possible and practicable within the provisions of this Marketing Program, as amended. The Committee shall render a full and complete accounting to each producer at the conclusion of each marketing season.

(b) **Annual Pool Records.** The detailed records relative to inferior raisin pools created by the Committee shall be kept on a marketing season basis to the end that separate accounting shall be made to producers for their equitable interests in the inferior pool created in each marketing season.

(c) **Equitable Interest of Producers.** The equitable interest of each producer in the holdings of the Committee shall be calculated upon a pro rata basis in accordance with the inferior raisin tonnage of each such producer. Such equitable interests shall be calculated separately for the inferior raisin tonnage of each marketing season to enable a separate accounting of the inferior raisin pool created in each marketing season. For the purpose of this Section, "holdings of the Committee" means the inferior raisin pool held by or for the Committee and the net proceeds from the sale, exchange, or other disposition

thereof by the Committee. The Committee shall from time to time distribute the cash "holdings of the Committee" ratably to all producers in accordance with their respective equitable interests therein, except that deductions shall be made from any such payment to a producer for any expenses incurred in establishing, maintaining, and disposing of such pool; *provided, however*, that upon the termination of this Marketing Program, as amended, any and all monies realized from the operations authorized herein and not required by the Committee to defray the expenses of such operations, shall be refunded by the Committee to producers forthwith upon a pro rata basis in accordance with their respective equitable interests in the inferior raisin pool, less such deductions as may be necessary to clear the account of each such producer with the Committee with respect to inferior raisins. The costs of establishing, maintaining, and disposing of the contents of an inferior raisin pool shall be met, in so far as possible, from the proceeds from the disposition thereof, and thereafter from the general funds of the Committee. The proceeds from such pool shall be charged only a fair pro rata portion of administrative expenses, as recommended by the Committee and approved by the Director, and such proceeds shall not be charged any portion of the expenses of any educational and trade stimulation program.

ARTICLE V

SURPLUS POOL

SECTION 1. Surplus Pool. The Committee is hereby authorized and empowered to establish and maintain a surplus pool into which there shall be delivered and received all of each producer's substandard raisins, together with such additional tonnage of standard quality raisins, if any, which are required to satisfy the surplus requirement of each such producer for the current raisin crop; *provided, however*, that the Committee may make provisions for the fulfillment by producers of surplus requirements by green diversion and the purchase of special certificates from producers who have green diverted more than their surplus requirements, pursuant to Article VII hereof; and *further provided*, that the Committee may authorize the partial or complete satisfaction of the surplus requirement of any producer, whose raisins have become damaged by rain or other causes beyond his control, by the destruction or by-product usage of such damaged raisins on the farming premises of such producer in a manner and upon the basis of a guarantee, financial or otherwise, acceptable to the Committee. Inferior raisins shall not qualify in fulfillment of the surplus requirement. Substandard raisins shall qualify in fulfillment of the surplus requirement to the extent that they are delivered and all substandard raisins shall be delivered into the surplus pool. The surplus requirement applicable to a given raisin crop shall be met by each producer regardless of the marketing season in which such raisins are first delivered by such producer.

SEC. 2. Facilities for Surplus Pool. The Committee may, with the prior approval of the Director, contract for, create, establish, or

otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market, and disposal of the contents of a surplus pool in such manner as to maintain stability in the markets and to dispose of such surplus and any of its derived products.

SEC. 3. Pledging of Surplus Pool. The Committee or any agency thereof, with the prior approval of the Director and upon securing title to the contents of a surplus pool, may pledge the contents thereof in order to finance such pool, subject to the provisions of this Marketing Program, as amended. The provisions of any such loan agreement shall take precedence over the provisions of this Article with reference to the date on or before which the disposition of the raisins in the surplus pool shall be completed.

SEC. 4. Disposal of Surplus Pool. Pursuant to this Section 4, the Committee shall sell or authorize the sale of surplus pool raisins as soon as practicable after delivery of same to the Committee or to any agency authorized by the Committee to receive such raisins; *provided, however,* that none of the standard raisins in such pool shall be sold or otherwise disposed of prior to January 1 of the marketing season in which such pool is established. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins. The Committee shall make provision whereby a producer who delivers raisins to a surplus pool may, within the shortest time practicable, buy the same or an equivalent grade of raisins, subject to regulations to be established by said Committee.

Surplus pool raisins shall be sold only for assured by-product and other diversion purposes, and shall not be sold into normal marketing channels; *provided, however,* that any sale or sales of surplus raisins for distillation shall be made only with the prior approval of the Director and then only if such sales are at prices equivalent to average prices paid by vintners during the current marketing season for wine grapes of similar variety and quality; and *further provided,* that if on or after November 1, but prior to February 1, of the marketing season in which such pool is created it shall appear, on the basis of available statistics, that the original estimates of carry-over, crop, and/or sales were not in accord with later facts or estimates and that an excessive quantity of raisins has been placed in such surplus pool, the Committee may, with the prior approval of the Director, transfer a sufficient quantity, if available, of the standard quality raisins from the surplus pool to the stabilization pool to offset the indicated excess in the surplus pool. Substandard raisins shall not be so transferred. Raisins so transferred shall thereafter be handled and disposed of in accordance with Article VI of this Marketing Program, as amended. The Committee shall adopt and use such methods and procedure as it deems proper to satisfy itself that the conditions of this Section are fulfilled. A bond, penalty, or other financial guarantee acceptable to the Committee shall be given in guarantee of the

proper performance of the provisions of this Article by each person receiving surplus raisins from the Committee or its agent.

All of the raisins held in a surplus pool shall be sold or otherwise disposed of on or before July 15 of the marketing season next succeeding the marketing season in which such pool is established.

The Committee may authorize the substitution of standard or substandard raisins in the possession of a producer for standard quality raisins in the surplus pool, subject to costs, corrections in pool credits and equitable interests, and other pertinent transactions in accordance with regulations and a schedule of differentials to be issued by said Committee. Furthermore, in the case of a producer whose substandard raisin tonnage exceeds the surplus requirement of such producer, the Committee may authorize the delivery to such producer of standard quality raisins from the surplus pool in a quantity based on the tonnage by which his substandard raisins exceed his surplus requirement, subject to costs, corrections in pool credits and equitable interests, and other pertinent transactions in accordance with regulations and a schedule of differentials to be issued by the Committee with the approval of the Director, the Committee may use standard raisins remaining in the surplus pool in lieu of monies in payment for green diversion properly performed and duly certified by the Committee or its agent.

Sec. 5. Interest of Producers in Holdings of the Committee.

(a) **Accountability.** The Committee shall not engage in any activities other than those authorized in this Marketing Program, as amended, and shall in all matters act in accordance with that procedure which in its judgment is in the best interests of all producers. The Committee shall conduct its affairs in such manner that the details of each seasonal marketing program will be completed and final returns and settlement made to all producers within the shortest period of time possible and practicable within the provisions of this Marketing Program, as amended. The Committee shall render a full and complete accounting to each producer at the time of making final returns and settlement.

(b) **Annual Pool Records.** The detailed records relative to surplus pools created by the Committee shall be kept on a marketing season basis to the end that separate accounting shall be made to producers for their equitable interests in the surplus pool created in each marketing season.

(c) **Equitable Interest of Producers.** The equitable interest of each producer in the holdings of the Committee shall be calculated upon a pro rata basis in accordance with the surplus and/or substandard tonnage of each such producer, with adequate and proper differentials for variety and grade, and less deductions for any payments or advances or substitutions made by the Committee to such producer for surplus and/or substandard pool tonnage. Such tonnage shall be the sum of the surplus and/or substandard tonnage received into the surplus pool by the Committee from each such producer and the surplus tonnage certified by the Committee as green diversion by each such producer, together with the tonnage of damaged raisins destroyed or used on the producer's farming premises pursuant to

Section 1 of this Article, with due allowance for any substitutions authorized by said Committee.

The schedule of differential credits on the basis of variety and grade shall be recommended by the Committee and approved by the Director before any advance payments or final payments are made to producers on account of such equitable interests. Such equitable interests shall be calculated separately for the surplus and/or substandard tonnage of each marketing season to enable a separate accounting of the surplus pool created in each marketing season. For the purpose of this Section, "holdings of the Committee" means the surplus pool held by or for the Committee and the net proceeds from the sale, exchange, or other disposition thereof by the Committee. The Committee shall from time to time distribute the cash "holdings of the Committee" ratably to all producers in accordance with their respective equitable interests therein, except that deductions shall be made from any such payment to a producer for any monies owed to the Committee by such producer with respect to surplus tonnage; *provided, however*, that upon the termination of this Marketing Program, as amended, any and all monies realized from the surplus and/or substandard control operations authorized herein and not required by the Committee to defray the expenses of such operations, shall be refunded by the Committee to producers forthwith upon a pro rata basis in accordance with their respective equitable interests in the surplus pool, less such deductions as may be necessary to clear the account of each such producer with the Committee. The costs of establishing, maintaining, and disposing of the contents of a surplus pool shall be met from the proceeds of the disposition thereof. The proceeds from such pool shall be charged only a fair pro rata portion of administrative expenses, as recommended by the Committee and approved by the Director, and such proceeds shall not be charged any portion of the expenses of any educational and trade stimulation program; *provided, however*, that the foregoing shall not exempt surplus raisins from any approved certificate fees for administrative expenses.

ARTICLE VI

STABILIZATION POOL

SECTION 1. Stabilization Pool. The Committee is hereby authorized and empowered to establish and maintain a stabilization pool into which there shall be delivered and received the stabilization percentage of each producer's crop of standard quality raisins other than the raisins of standard quality which have been placed in the surplus pool; *provided, however*, that the Committee may make provisions for the fulfillment by producers of stabilization requirements by green diversion, pursuant to Article VII hereof; and *further provided*, that any Muscat layer raisins in clusters which are delivered to a receiving station on or before December 1 of the current marketing season shall be exempted from the stabilization requirement. Substandard or inferior raisins shall not be placed in such stabilization

pool. The stabilization requirement applicable to a given raisin crop shall be met by each producer regardless of the marketing season in which such raisins are first delivered by such producer.

SEC. 2. Facilities for Stabilization Pool. The Committee may, with the prior approval of the Director, contract for or create, establish, or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market, and disposal of the contents of a stabilization pool in such manner as to maintain stability in the markets and to dispose of the contents of such stabilization pool.

SEC. 3. Pledging of Stabilization Pool. The Committee or any agency thereof, with the prior approval of the Director, and upon securing title to the contents of a stabilization pool, may pledge the contents or any portion thereof as collateral for loans on such stabilization tonnage, subject to the provisions of this Marketing Program, as amended, for the financing of such stabilization pool only and for securing funds to enable advances to growers for the raisins delivered to such pool. Furthermore, the Committee may, with the prior approval of the Director, authorize special pooling arrangements with the Federal Government for the purposes of encouraging the exportation of such stabilization tonnage and/or diversion of such tonnage from normal channels of trade, including distribution of such raisins to persons on relief. Such special arrangements may include the creation of a special pool out of a portion of the stabilization tonnage. The provisions of any such loan agreement shall take precedence over the provisions of this Article relative to the date on or before which the disposition of the raisins in the stabilization pool shall be completed.

SEC. 4. Disposal of Stabilization Pool. Pursuant to this Section 4 the Committee shall sell or authorize the sale of stabilization pool raisins as soon as practicable after delivery of same to the Committee, or to any agency authorized by the Committee to receive such raisins, in such manner as to maintain stability in the markets and to dispose of such raisins. The procedure relative to the disposition of such raisins and the provisions of the contract of sale shall be established by the Committee with the prior approval of the Director; *provided, however*, that all packers of record with the Program Committee shall be given uniform notice of offers to sell stabilization pool raisins and, if allocation of tonnage among packers becomes necessary, such allocation shall be made under uniform rules, which are equitable as to all packers participating in offers to purchase, as formulated by the Committee and approved by the Director. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins; *provided, however*, that no sales of raisins from a stabilization pool, other than such raisins which are subject to special loaning or pooling arrangements with the Federal Government, shall be made at less than the prevailing market price for raisins of the same variety and grade on the date of sale.

Stabilization pool raisins shall be sold only into normal marketing channels; *provided, however*, that if on or after November 1, but prior to February 1, of the marketing season in which such pool is created it shall appear, on the basis of available statistics, that the original estimates of carry-over, crop, and/or sales are not in accord with later facts or estimates and that an inadequate quantity of raisins has been placed in the surplus pool, the Committee may, with the prior approval of the Director, transfer a sufficient quantity of the lowest quality raisins from the stabilization pool to the surplus pool to offset the indicated inadequacy in the surplus pool, to thereafter be handled and disposed of in accordance with Article V of this Marketing Program, as amended; and *further provided*, that if special pooling arrangements have been made with the Federal Government in connection with export and/or diversion outlets for such stabilization raisins; in accordance with Section 3 of this Article, the foregoing requirement that stabilization pool raisins shall be sold only into normal marketing channels shall not be applicable with respect to stabilization pool raisins subject to such special pooling arrangements.

All of the raisins held in a stabilization pool shall, if possible, be sold on or before November 1 of the marketing season next succeeding the marketing season in which such pool is established. Any raisins remaining in such stabilization pool after such date shall be immediately transferred to the surplus pool. In the disposal of any stabilization pool created by the Committee, effort shall be made by said Committee to effectuate sales in such fashion that the quantity of such stabilization pool raisins sold from time to time shall be coordinated as closely as possible with market demands therefor.

SEC. 5. Interest of Producers in Holdings of the Committee.

(a) **Accountability.** The Committee shall not engage in any activities other than those authorized in this Marketing Program, as amended, and shall in all matters act in accordance with that procedure which, in its judgment, is in the best interests of all producers. The Committee shall conduct its affairs in such manner that the details of each seasonal marketing program will be completed and final returns and settlement made to all producers within the shortest period of time possible and practicable within the provisions of this Marketing Program, as amended. The Committee shall render a full and complete accounting to each producer at the time of making such final return and settlement.

(b) **Annual Pool Records.** The detailed records relative to stabilization pools created by the Committee shall be kept on a marketing season basis to the end that separate accounting shall be made to producers for their equitable interests in the stabilization pool created in each marketing season.

(c) **Equitable Interest of Producers.** The equitable interest of each producer in the holdings of the Committee shall be calculated upon a pro rata basis in accordance with the stabilization tonnage of each such producer, with adequate and proper differentials for variety and grade, and less deductions for any payments or advances

made by the Committee to such producer for stabilization pool-tonnage. Such stabilization tonnage shall be the sum of the stabilization tonnage received by the Committee from each such producer and the stabilization tonnage certified by the Committee as green diversion by each such producer.

The schedule of differential credits on the basis of variety and grade shall be recommended by the Committee and approved by the Director before any advance payments or final payments are made to producers on account of such equitable interests. Such equitable interests shall be calculated separately for the stabilization tonnage of each marketing season to enable a separate accounting of the stabilization pool created in each marketing season. For the purpose of this Section, "holdings of the Committee" means the stabilization pool held by or for the Committee and the net proceeds from the sale, exchange, or other disposition thereof by the Committee. The Committee shall from time to time distribute the cash "holdings of the Committee" ratably to all producers in accordance with their respective equitable interests therein, except that deductions shall be made from any such payment to a producer for any monies owed to the Committee by such producer; *provided, however*, that upon the termination of this Marketing Program, as amended, any and all monies realized from the stabilization operations authorized herein and not required by the Committee to defray the expenses of such operations, shall be refunded by the Committee to producers forthwith upon a pro rata basis in accordance with their respective equitable interests therein, less such deductions as may be necessary to clear the account of each such producer with the Committee. The costs of establishing, maintaining, and disposing of the contents of a stabilization pool shall be met from the proceeds of the disposition thereof. The proceeds from such pool shall be charged only a fair pro rata portion of administrative expenses, as recommended by the Committee and approved by the Director; *provided, however*, that the foregoing shall not exempt stabilization raisins from the approved certificate fees and any equalization and trade stimulation assessments.

ARTICLE VII

GREEN DIVERSION

SECTION 1. **Creation of Voluntary Green Diversion Plan.** The Committee is hereby authorized and empowered to provide that the green diversion of grapes by producers be permitted as an alternative method, in order to minimize an estimated surplus of raisins, by which producers may satisfy a part of, or all of, their surplus and/or stabilization requirement, or by which producers, desirous of so doing, may green divert their entire production.

The Committee shall, not later than June 15 of each year, set forth, with prior approval of the Director, the rules and regulations which shall govern the operations of any green diversion plan. July 15 shall be the latest date in any year upon which green diversion may be performed under such plan.

SEC. 2. Contracts for Green Diversion. The Committee may contract for, or approve, the diversion of grapes by producers who have complied with the rules and regulations set forth by the Committee; *provided, however*, that the Committee shall not contract for or approve, in the aggregate, the green diversion of a quantity of grapes of which the estimated equivalent raisin tonnage is in excess of the estimated raisin surplus for the season then current, as determined pursuant to Article III hereof.

SEC. 3. Payment of Green Diversion Costs. The Committee may contract for or approve, the green diversion of grapes from which, in the opinion of the Committee, raisins might reasonably be made, and shall have the right to offer payment to growers for such green diversion activities.

(a) **Source of Funds.** The Committee may utilize the Equalization Fund provided for in Article VIII hereof to purchase grapes offered for green diversion by producers in accordance with the procedure established in Section 4 of this Article VII, and to defray the pro rata administrative and other proper costs of such green diversion program, as approved by the Director. In lieu of or in addition to such method, the Committee, with the approval of the Director, may use standard raisins remaining in the surplus pool in payment for green diversion.

(b) **Rate of Payment.** The Committee shall set forth, not later than June 15 and with prior approval of the Director, the rate of payment, if any, per ton to be offered to producers for green diversion.

SEC. 4. Regulation of Green Diversion.

(a) **Application.** Each producer who desires to green divert any portion of his total production shall first make written application to the Committee, using an application blank supplied by the Committee, for approval of such green diversion.

(b) **Appraisal.** As soon as is practicable after the receipt of a producer's application to green divert a part of or his entire crop of grapes, agents authorized by the Committee shall make an appraisal of the producer's entire production and of the portion offered for green diversion, which portion shall not be less than the production from the minimum number of acres which the Committee deems it advisable to approve. Such agents shall appraise each producer's production for grade and tonnage pursuant to Article X hereof. In every instance if the producer accepts the appraisal he shall do so in writing on a form provided by the agent.

The Committee shall appoint for each district a review committee of five (5) local producers whose duty it shall be to arbitrate and settle any differences of opinion which may arise between appraisal agents and producers in connection with green diversion appraisal. In the event the producer does not assent to the final decision of the district review committee as to the estimated grade and tonnage of the grapes to be involved in such green diversion, the Committee shall not approve such producer's application to green divert. The producer shall bear the cost of such appraisal service, as determined by the Committee.

(c) **Supervision.** Green diversion shall be performed under the supervision of an agent or agents of the Committee in a manner uniform as to all producers for whom an application for green diversion has been finally approved by the Committee. In so far as practicable, the Committee shall undertake to encourage the green diversion of grapes which, in the opinion of the Committee, are of the least desirable varieties or grades for drying purposes. The Committee shall not recognize the performance of green diversion until it is established to the Committee's satisfaction that the grapes so diverted can not be recovered for any commercial use.

(d) **Approval.** The Committee, after receipt of green diversion applications, may approve the green diversion of grapes by producers for:

(1) A part of, or all of, a producer's surplus requirement, and shall issue to such producer a certificate of green diversion which shall set forth the portion of such producer's surplus requirement which has been satisfied by such green diversion.

(2) All of a producer's surplus requirement and a part of, or all of, a producer's stabilization requirement, and shall issue to such producer a certificate of green diversion which shall set forth the producer's surplus requirement and the portion of such producer's stabilization requirement which has been satisfied by such green diversion.

(3) The entire production of a producer, and shall issue to such producer a certificate of green diversion which shall set forth the surplus requirement and the stabilization requirement which have been satisfied by such green diversion.

SEC. 5. Alternative or Additional Method. In lieu of, or in addition to, a green diversion program based on purchases or advances to producers by the Committee, the Committee may provide for the green diversion by a producer between June 15 and July 15, inclusive, in any year, of more than such producer's surplus requirement on the basis of a plan of certificate sale and exchange between producers. In such event, the Committee, or its agent or agents, shall first make such arrangements as may be necessary to assure itself that the producer so diverting can and will sell the special certificates to be issued by the Committee for the diversion of the tonnage in excess of such producer's surplus requirement to one or more other producers for an amount to be mutually agreed upon by the seller and the buyer thereof. The purchasers of such certificates shall, through arrangements of the Committee, be contractually bound to such purchase before the Committee grants approval for such additional or excess green diversion. Purchases of such special certificates by a producer shall be limited to that portion of the surplus requirement of such purchasing producer which has not been met either by green diversion or by delivery of raisins to the surplus pool. The purchaser of such special certificates shall by such purchase and to the extent represented by the tonnage covered by such certificates be considered to have met his surplus requirement and may, upon payment of the established fees and assessment, market an equivalent tonnage of standard raisins as

salable tonnage, which such tonnage shall be in addition to the salable tonnage otherwise certificated for such purchaser; *provided, however*, that under no circumstances shall such purchaser be authorized to fulfill his stabilization requirement by any method other than by delivery of raisins to the stabilization pool, by green diversion, or by a combination of such methods; and *provided, further*, that under any plan or combination of plans of green diversion, the Committee shall not approve, in the aggregate, the green diversion of a quantity of grapes of which the estimated equivalent raisin tonnage is in excess of the estimated raisin surplus for the season then current, as determined pursuant to Article III hereof.

SEC. 6. Accountability. The Committee shall maintain such books and records as may be necessary to render a full and complete statement relative to all of the operations of the green diversion plan. Such books and records shall clearly set forth any and all interests or obligations of producers participating in such green diversion plan for the purpose of enabling a final settlement to all producers upon a basis equitable under this Marketing Program, as amended, as to all producers.

ARTICLE VIII

EQUALIZATION FUND

SECTION 1. Establishment of Equalization Fund. In order to provide funds by which the Committee may purchase or indemnify producers for raisin grapes which are green diverted and to adjust inequities in payments to producers for pool tonnages, the Committee may, by assessment, and with the prior approval of the Director, create, maintain, and disburse an Equalization Fund. Any assessment levied to create an Equalization Fund shall be uniform as to all producers, shall be on the basis of a fixed amount per ton, and shall be levied upon both the salable and stabilization portions of each producer's total production of raisins as determined by the Committee. The green diversion of all or a part of such salable and stabilization portions shall not exempt the producer so diverting from paying the established equalization assessment. Such assessment shall be so calculated as to produce a sum sufficient to provide funds for the purposes for which such Equalization Fund is created.

SEC. 2. Utilization of Equalization Fund. The Committee may use the Equalization Fund, with the prior approval of the Director, to purchase grapes at a uniform price from producers who have contracted with the Committee, or its agent or agents, to green divert grapes which in the opinion of the Committee might reasonably be made into raisins. Such purchases shall be made for the purpose of indemnifying producers whose production, in whole or in part, is diverted from its normal marketing outlets.

In no instance shall the funds raised by the Equalization Fund assessment be used for purposes other than those for which they were levied as set forth in this Article VIII, and any allocation of general administrative charges against such Fund shall be only upon a fair

pro rata basis; as recommended by the Committee and approved by the Director.

SEC. 3. - Accountability for Equalization Fund.

(a) **Annual Purchase Records.** The Committee shall maintain such books and records as may be necessary to render, as soon as possible, and practicable after the completion of all purchases of grapes for green diversion, a full and complete accounting for the fund raised by the assessment of producers as provided for in Section 1 of this Article VIII.

(b) **Refunds.** If such fund is in excess of the amount used in the purchasing of grapes and the administrative costs related thereto, the excess amount may be refunded to producers on a pro rata basis, in accordance with the amounts contributed to such Equalization Fund by each producer through the payment of such assessment as may be levied pursuant to this Article, or such excess amount, with the approval of the Director, may be withheld for use in the succeeding marketing season; *provided, however*, that in the event of the termination of this Marketing Program, as amended, any such excess funds shall be refunded forthwith to producers who contributed thereto in proportion to their respective contributions.

ARTICLE IX

TRADE STIMULATION

SECTION 1. **Trade Stimulation.** The Committee is hereby authorized and empowered, subject to the approval of the Director, to establish plans for appropriate educational and trade stimulation efforts to broaden distribution and increase consuming outlets; *provided, however*, that any such plans shall be directed toward increasing the sale of raisins without reference to a particular brand or trade name and *provided, further*, that no educational and trade stimulation program shall be issued which shall make use of false or unwarranted claims on behalf of raisins, or disparage the quality, value, sale, or use of any other food product.

SEC. 2. **Administration of Trade Stimulation Program.** In the event that an educational and trade stimulation program is to be issued, the Committee shall consider in detail and submit to the Director for his approval such plans for educational and trade stimulation efforts as are specified in and as are in accordance with Section 1 of this Article. The monies collected for educational and trade stimulation purposes pursuant to Article XI of this Marketing Program, as amended, shall be disbursed strictly in accordance with said plans, and the budget therefor, as submitted by the Committee and approved by the Director.

ARTICLE X

RECEIVING STATIONS AND INSPECTION AND GRADING

SECTION 1. **Receiving Stations.** The Committee shall establish or designate receiving stations within the various districts of the

Zone to which all raisins which producers desire to prepare for market and/or market shall be delivered by producers for inspection and grading, for the application of the established surplus and/or stabilization percentages to the tonnage of standard and substandard raisins in each delivery so made by a producer, and the retention by the Committee of the indicated inferior, surplus, and stabilization pool tonnages. At such time, and upon fulfillment of the inferior, surplus, and stabilization requirements pertaining to such individual delivery of raisins, the salable percentage, as determined by the Committee, of the tonnage of standard raisins so delivered by a producer, other than the standard raisin tonnage of such producer which is placed in the surplus pool, shall be properly certificated as the producer's salable tonnage of raisins in such individual delivery.

SEC. 2. Inspection and Grading of all Deliveries of Raisins. In accordance with the seasonal marketing program approved pursuant to Article III of this Marketing Program, as amended, all raisins shall be inspected and graded in accordance with the grades and the inspection and grading regulations established by the Committee pursuant to Section 4 of this Article. There shall be an inspector, employed and authorized by the Committee, at each receiving station, who shall issue an inspection and grading certificate for each delivery of raisins made by a producer to such receiving station. Such inspection and grading certificates shall be serially numbered and shall set forth the date of inspection and grading, the producer's name and address, the variety or varieties of such raisins, the net weight and grade or grades of the respective varieties of such raisins, the respective varieties, grades, and weights of raisins in each delivery which are withheld for the inferior, surplus, and stabilization pools, and such other information as the Committee may deem necessary to effectuate the objectives and purposes of this Marketing Program, as amended.

SEC. 3. Inspection and Grading of Grapes for Green Diversion. In connection with each approved application by a producer for green diversion privileges pursuant to Article VII hereof, the Committee shall cause such green diversion to be supervised by its duly authorized agent or agents, and such grapes shall be inspected and graded by an inspector authorized by the Committee.

In determining the grade of grapes for green diversion, cognizance shall be taken, in so far as possible, of the grade of raisins which might reasonably be made from such grapes. In addition, an estimate shall be made of the tonnage of grapes involved in each such application, which estimate shall be assented to in writing by the producer of such grapes; provided, however, that no part or parts of this or other Articles of this Marketing Program, as amended, shall be construed to make it mandatory that the Committee approved each or any such application by a producer for green diversion privileges. The Committee shall appoint, for each district, a review committee of five (5) local producers to adjust differences of opinion upon estimated grades and tonnages. In the event that the producer does not assent to the final decision of the district review committee as to the estimated grade and tonnage of the grapes to be involved in such green diversion, the Com-

mittee shall not approve such producer's application for green diversion privileges.

A certificate of green diversion shall be issued for each approved application, which certificate shall set forth information comparable to that required on the inspection and grading certificate provided for in Section 2 of this Article, and which shall set forth, in addition, the estimated tonnages of raisins by varieties and grades which might reasonably be made from such grapes, and the producer's assent to the estimates and information set forth on such certificate of green diversion.

SEC. 4. Grades and Inspection and Grading Regulations. Annually and prior to the earliest date upon which any deliveries of raisins will be made, but in no event sooner than the date upon which the Director approves the report required by Section 1 of Article III hereof, the Committee shall establish and declare effective the grades and the rules, regulations, and procedure under which the inspection and grading required by this Article shall be conducted and performed. The Committee shall establish a standard grade, and all substandard raisins in each delivery shall be placed in the surplus pool. Such inspection and grading shall be as simple and direct as is commensurate with the effectuation of the purposes and objectives of this Marketing Program, as amended.

Provisions shall be made in the inspection and grading procedure for the issuance of the necessary certificates and the collection from each producer of the fees and assessment established pursuant to Articles VIII and XI hereof. Such procedure shall likewise provide for the diversion of all inferior raisins in each delivery to the inferior raisin pool, pursuant to Article IV hereof, and for the diversion of all substandard raisins in each delivery to the surplus pool, pursuant to Article V hereof.

ARTICLE XI.

CERTIFICATES, FEES, AND BUDGETS

SECTION 1. Certificates.

(a) **Primary Certificates.** One Primary Certificate shall be issued by the Zone Agent to each producer; such Certificate shall indicate the name, the address, the approximate acreage of grapes from which the producer would normally produce raisins during the current marketing season, and such other information which the Committee may require.

(b) **Secondary Certificates.** Secondary Certificates shall be issued to control the time and volume of movement of salable raisins into the primary channels of trade. One or more Secondary Certificates shall be issued to each holder of a Primary Certificate, and shall accompany all deliveries of salable raisins into a primary channel of trade. Secondary Certificates shall not be negotiable between producers except with the approval of the Committee and the Director. Cooperative associations and other marketing agencies entitled to the possession of agricultural commodities for marketing purposes shall

be authorized in writing by the Committee to receive certificates for producers represented by such agencies and to represent the respective producers of such agencies when proration is applied to raisins while in the possession of such agencies.

(c) **Issuance of Secondary Certificates.** Secondary Certificates shall be issued to producers at the time of delivery of raisins by producers for subsequent inspection, grading, certification, and diversion of the uniform pool percentages of the delivery to the pool or pools established by the Committee. Delivery of all raisins shall be made by producers to the receiving stations established and/or designated by the Committee, pursuant to Article X hereof, or to a cooperative association authorized in writing by the Committee to act for the Committee as a receiving station; *provided, however,* that the Committee shall authorize and permit the concentration of the tonnage of producers who are members of a non-profit cooperative marketing association in accordance with the usual practice of such cooperative prior to the application of proration, but such authorization and permission shall be granted solely on the condition that proration will be and is applied at the point of concentration and prior to any other or further handling of the raisins.

SEC. 2. **Fees.** (a) Primary and Secondary Certificates shall be issued only after the payment to the Zone Agent or his agent of the reasonable and proportional fees for either or both such Certificates fixed by the Committee and approved by the Director. The fees shall be so calculated as to produce an amount necessary to meet the expenses of the administration and enforcement of the seasonal marketing program, for funds required for the purposes specified in such program, as approved by the Director, and a proper proportion, in accordance with the Act, of the cost of the maintenance of the Commission and of the Department of Agriculture in the performance of the duties required in connection with this Marketing Program, as amended; *provided, however,* that in fixing such fees due cognizance shall be taken of such deductions for estimated expenses as may be made from any advances made to producers for pool tonnage.

(b) If an educational and trade stimulation program is recommended by the Committee and approved by the Director, pursuant to Article IX hereof, the estimated expenses and costs thereof shall be met from funds obtained from certificate fees and from deductions made from the proceeds of sale or from any advances made to producers for stabilization pool tonnage. In such event and prior to the collection of any such fees or the making of any such deductions, the Committee shall determine and announce, with the approval of the Director, the exact amount of such certificate fees and deduction which shall be assessed for educational and trade stimulation purposes and the exact amount of such fees and deduction which shall be assessed for all other purposes authorized in the annual program approved by the Director; *provided, however,* that the fee which may be assessed and collected from producers for such educational and trade stimulation purposes shall not exceed two dollars (\$2.00) per ton upon all tonnage of standard quality raisins marketed by each producer in normal marketing channels for consumption as raisins.

The foregoing segregation of the certificate fees and deduction shall in effect create separate and distinct funds which shall be deposited, expended, audited, and accounted for separately, and in no case shall the funds so collected be used for any purposes other than those for which they were collected, as evidenced and conclusively demonstrated by the announced segregation of such fees and deduction, in accordance with this Subsection (b). Educational and trade stimulation funds so allocated shall not thereafter be charged any of the expenses of administration, enforcement, pools, or Committee activities.

(c) In the event that the Committee authorizes a cooperative association or other marketing agency to receive certificates for producers represented by such agency, said Committee shall contract with such agency for payment of the fees due upon any and all tonnage delivered by producers to such agency.

SEC. 3. **Annual Budgets.**

(a) **Administrative Budget.** Annually on or before August 1 the Zone Agent shall, at the direction of and subject to the approval of the Committee, prepare a detailed budget of estimated expenses for all purposes authorized herein except the estimated expenses of any educational and trade stimulation program which may be approved by the Director. Such budget shall be based upon the approved seasonal marketing program and basis of assessment, with full consideration of any equalization assessment which may be approved and any segregation which may be required in certificate fees and deductions from any advances made to producers for stabilization pool tonnage by virtue of an approved educational and trade stimulation program. Adequate provision shall be made for miscellaneous financial contingencies. The Committee shall recommend such budget to the Director for his approval.

(b) **Trade Stimulation Budget.** In the event that the Committee recommends to the Director the establishment of an educational and trade stimulation program, there shall be submitted with such recommendation a proposed budget in detail covering the estimated expenses of such program. Such budget shall be prepared upon the basis of the estimated amount of funds to be made available by the approved segregation of certificate fees and deductions from advances on stabilization pool tonnage. Such budget shall be recommended by the Committee to the Director for his approval.

SEC. 4. **Bonds.** No agent of the Committee shall have or receive any funds whatever collected pursuant to the provisions of this Marketing Program, as amended, until there shall have been filed and maintained with the Secretary of State of the State of California, in the manner prescribed by law, by such agent of the Committee an official bond in such penal sum as may be prescribed by the Director.

SEC. 5. **Refunds.** At the end of each marketing season and after payment of all of the costs of the operation of the program, if the certificate fees for administrative expenses collected during the season and still remaining for the use of the Committee exceed ten

per cent (10%) of such fees collected during the season, such excess funds shall be disbursed to producers who contributed thereto in proportion to their contribution; *provided, however*, that in the event of the termination of this Marketing Program, as amended, any such funds remaining for the use of the Committee not otherwise disposed of by the provisions of this Section 5 shall be deposited in the State Treasury of California to the credit of the Department of Agriculture Fund.

ARTICLE XII

BOOKS, RECORDS, AND FACILITIES

SECTION 1. Books, Records, and Facilities. The Director through his duly authorized representatives and agents, including the Zone Agent in charge of this Marketing Program, as amended, shall have access, solely for the purpose of investigating possible violations of this Marketing Program, as amended, to the records of producers, dealers, distributors, public and private property transportation agencies, and handlers of raisins, and shall have at all times free and unimpeded access to all buildings, yards, warehouses, stores and transportation facilities and other places in which raisins are kept, stored, handled or transported.

SEC. 2. Subpoenas and Testimony. For the purpose of administering and enforcing the provisions of the Act and of this Marketing Program, as amended, the Director may adopt such necessary rules and regulations as he may, from time to time, deem advisable and shall conduct any hearing, inquiry or investigation which the Director has power to undertake or hold. In the conduct of any such hearing, inquiry or investigation the Director shall have power to administer oaths, and issue subpoenas for the attendance of witnesses and the production of papers, books, maps, accounts, documents and testimony in any inquiry, investigation or hearing ordered or undertaken in any part of the State. The superior court of the county or city and county in which any such inquiry, investigation or hearing may be held shall have power to compel the attendance of witnesses and to require the disclosure by such witnesses of all facts known to them, relative to the matters under investigation, and the production of papers, maps, books, accounts, documents and testimony as required by any subpoenas issued by the Director.

SEC. 3. Confidential Information. Any and all information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be disclosed except when required in a judicial proceeding.

SEC. 4. Reports to Director. In order to make available to the Director and the Committee facts and data relative to supplies of raisins on hand, quantities sold, selling prices, and other information necessary to the making of accurate and complete findings as required in Article III hereof, the Director may receive or obtain from each producer or handler of raisins, pursuant to the provisions of this Article, such

information and data as the Director finds are essential to the effectuation of the Act and of this Marketing Program, as amended, with respect to raisins; *provided*, that any such data or information so received or filed with the Director by any producer or handler of raisins shall not be made available by the Director in such manner as to reveal the identity of such information or data as to any such producer or handler, but such data or information may be made available to the Committee by the Director in combined or summarized form.

ARTICLE XIII

APPEALS

SECTION 1. **Appeals.** Any producer may petition the Director to review any order or decision of the Committee. Any such petition must be filed in writing, setting forth the facts upon which it is based.

SEC. 2. **Effect of Appeal.** Pending the disposition of any appeal set forth in accordance with Section 1 of this Article, the parties shall abide by the order or decision of said Committee, unless the Director shall rule otherwise. The Director shall, if the facts stated show reasonable grounds, grant any such petition and may review or revise in any manner whatsoever any order or decision upon which an appeal is taken, subject to the provisions of this Marketing Program, as amended, and of the Act.

SEC. 3. **Judicial Review.** Any order of the Director instituting a proration program and any other order of the Commission or Director substantially affecting the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action must be commenced within thirty (30) days after the effective date of the order complained of.

ARTICLE XIV

AGENTS

SECTION 1. **Agents.** The Director may, by designation in writing, name any person or persons, including officers or employees of the State Department of Agriculture, to act as his agent or agents, with respect to any provisions of this Marketing Program, as amended.

ARTICLE XV

RELATION TO OTHER MARKETING PROGRAMS AND OTHER LEGISLATION

SECTION 1. **Relation to Other Marketing Programs.** The Committee shall be and is hereby empowered to collaborate and cooperate with agencies or organizations with similar purposes, whether of this State, other states or of the United States, in the formulation and execution of a common marketing program; *provided*, that in proper cases the Commission may require such collaboration and cooperation. The Director may exercise any administrative authority prescribed by

the Act and by this Marketing Program, as amended, to effect uniformity and coordination in the administration of any and all laws, regulations, licenses or orders of this State, other states or of the United States, which directly or indirectly affect raisins.

Sec. 2. Relation to Other Legislation. The Committee may minimize an existing surplus by cooperating with the proper agencies in the enforcement of applicable existing standardization or other laws of this State, and of the United States, enacted to protect the consuming public from fraud or deception.

ARTICLE XVI

PURCHASES BY FEDERAL GOVERNMENT

SECTION 1. Purchases by Federal Government. Any provisions of this Marketing Program, as amended, notwithstanding, the Committee is hereby empowered to and it shall make any and all arrangements possible to move pool raisins into noncompetitive channels with the aid and assistance of the Federal Surplus Commodities Corporation or any other governmental agency; *provided, however*, that such disposition shall not be allowed to substantially curtail the quantity of raisins which may be sold into normal marketing channels.

ARTICLE XVII

SEPARABILITY

SECTION 1. Separability. If any section, subsection, clause, phrase, or other part of this Marketing Program, as amended, is for any reason held to be invalid, or the applicability thereof to any person, circumstance, or thing is held to be invalid, such decision shall not affect the remaining portions of this Marketing Program, as amended.

ARTICLE XVIII

AMENDMENTS

SECTION 1. Amendments. This Marketing Program, as amended, after being in effect, may be altered or modified in accordance with the provisions of the Act.

ARTICLE XIX

VIOLATIONS

SECTION 1. Violations. Any person who violates any provision of this Marketing Program, as amended, or who violates any rule or regulation adopted by the Committee and approved by the Director shall be liable civilly in an amount not to exceed a sum of five hundred dollars (\$500.00) for each and every violation to be recovered by the Director or by the Zone in an action brought with the approval

of the Director in any court of competent jurisdiction. All sums recovered under this Section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

ARTICLE XX

RULES AND REGULATIONS

SECTION 1. Rules and Regulations.

(a) The Director shall have power to establish such rules and regulations consistent with the Act as may be necessary to carry out the purposes and attain the objectives thereof.

(b) The exercise of the powers granted to the Committee in its administration of this Marketing Program, as amended, shall be subject to the approval of the Director; *provided, however*, that if the Director finds such powers conform with the provisions of this Marketing Program, as amended, and of the Act he shall approve such exercise.

ARTICLE XXI.

EFFECTIVE TIME AND TERMINATION

SECTION 1. **Effective Time.** This Marketing Program, as amended, shall become effective on the date specified by the Commission and shall continue in effect as long as the Act remains in effect, unless sooner amended, terminated, or suspended in accordance with the provisions of the Act.

SEC. 2. **Termination by Petition.** This Marketing Program, as amended, shall be terminated by the Commission if upon hearing it shall be established that an application for termination has been signed by not less than forty per cent (40%) of the raisin producers and by the owners of forty per cent (40%) of the producing factors within the Zone, and that the purposes of the Act and the objectives thereof are no longer effectuated by this Marketing Program, as amended; *provided, however*, that this Marketing Program, as amended, shall not be terminated except at the end of the then current marketing season.

SEC. 3. **Termination or Suspension by the Commission.** The Director, on behalf of the Commission, may at any time initiate an investigation to determine whether or not the facts specified in Section 10 of the Act continue to exist with respect to this Marketing Program, as amended. Upon a finding that any one or more of the prerequisite facts no longer exist, the Commission shall terminate or suspend this Marketing Program, as amended; *provided, however*, that this Marketing Program, as amended, shall not be terminated except at the end of the then current marketing season.

SEC. 4. **Effect of Termination, Suspension, or Amendment.** Unless otherwise expressly provided in the notice of amendment,

suspension, or termination, no amendment, suspension, or termination of this Marketing Program, as amended, shall either:

(a) Affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise, in connection with any other provision of this Marketing Program, as amended, not so amended, suspended or terminated; or

(b) Release, condone, or dismiss any violation of this Marketing Program, as amended, occurring prior to the effective time of such amendment, suspension, or termination; or

(c) Affect or impair any rights or remedies of the Commission, the Director or of any other person with respect to such violation.

EXHIBIT "2".**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION**

No. 78. Civil.

PORTER L. BROWN, *Plaintiff*,*vs.*

W. B. PARKER, Director of Agriculture; AGRICULTURAL PRORATE ADVISORY COMMISSION, RAISIN PRORATION ZONE #1, PROGRAM COMMITTEE, W. B. PARKER, IRA REDFERN, LYMAN LANTZ, JAMES LANGFORD, MARK G. JOHNSON, C. M. BROWN, WM. F. DARSIE, DR. DEAN MCHENRY, PRESTON MCKENNEY, H. C. ANDERSON, A. K. KELLY, RENALD MASTROFINI, ALEX BERG, MESROB MIRIGIAN, MELCHIOR HANSEN, A. L. DAVIDSON, W. J. CECIL, J. C. HARLAN, One Doe, Two Doe, Three Doe, Four Doe, Five Doe, Six Doe, Seven Doe and Eight Doe, *Defendants*.

Before Albert Lee Stephens, Circuit Judge; Leon R. Yankwich and Campbell E. Beaumont, District Judges.

STEPHENS, *Circuit Judge*:

The plaintiff, who is a packer of raisins in the State of California, instituted this action to restrain the enforcement of a prorate program for raisins prescribed under the authority of the California Agricultural Prorate Act (Chap. 754, Cal. Stats. 1933) as amended, hereinafter called the Act. He has alleged and we hold that he has proved that the issues involve a sum in excess of \$3,000.00, in that the State of California is attempting to enforce the provisions of the Act and is claiming penalties in the amount of \$13,000.00 against the plaintiff.

It is plaintiff's position that the program formulated under the Act is unconstitutional in that it prevents his purchase in open market for shipment in interstate com-

merce and that it constitutes a direct interference with interstate commerce in contravention of the provisions of the Federal Constitution.

The defendant Proration Zone No. 1 filed a cross complaint praying that the Act and program thereunder be declared a valid exercise of the police power of the State of California, that the² plaintiff be enjoined from refusing to comply therewith, and for an accounting and damages for his failure to comply in the past.

The case was tried before United States Circuit Judge Albert Lee Stephens and United States District Judges Leon R. Yankwich and Campbell E. Beaumont, sitting as a "three judge court" under the authority of 28 U. S. C. A. Sec. 380, and was submitted upon the question of the constitutionality of the program set up under the Act.¹

The raisin industry is an important one in California. It is uncontroverted that 95% of the naturally dried raisins consumed in the United States are produced in said Zone No. 1,² and 95% of such raisins produced in said zone are consumed outside the State of California. The stipulation of facts filed by the parties shows the following with reference to the customary manner in which the producers of raisin grapes in California, including Zone No. 1, operate:

"The producer of grapes is generally either the owner or the lessee of the land upon which the grapevines are located. * * * The producer picks the bunches of grapes to be utilized for raisins and spreads them on trays laid between the rows of vines, turns the trays from time to time, and finally dumps the dried contents into sweat boxes or picking boxes. The producer grades the same for quality and to eliminate sub-standard and inferior raisins and sometimes leaves this to be done for him by the packer

¹ We have carefully considered the very recent case of *Railroad Commission of Texas, et al. v. The Pullman Co., et al.*, 61 S. Ct. 643, 85 L. Ed. (March 3, 1941) and have concluded that the principles therein treated do not apply to the issues of the instant case.

² Zone No. 1 was established pursuant to proceedings initiated under the Act, and includes an area composed of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings and Kern Counties in the State of California.

before the latter takes delivery. When the producer is ready to deliver his raisins, he hauls the same, or employs independent truckers to haul the same, in sweat boxes or picking boxes to the packing plant, or in some cases the packer calls and takes delivery of the same in the vineyard.

* * * All raisins sold by producers are sold to such packers in the State of California. Sale is completed when delivery is made and practically all sales are cash transaction, the producer receiving full payment for all raisins delivered immediately or within a ten day period.

"When the raisins are delivered by producers to such packers, they are cured but have not been subjected to any cleaning or other treatment. When delivered in such sweat boxes or picking boxes to the packer, the raisins are in clusters attached to the dried stems upon which they matured, except such as have fallen from said stems and have generally still attached a portion of the stem. * * *

"The raisins received from the producers are stored by the packers in containers upon the premises of the latter and are held by him (sic) in such containers for periods varying from a few days up to two years. * * * The packer at any time or at various times during this period removes the raisins from such containers and prepares the same for commercial sale and distribution to the public by cleaning, stemming, cap-stemming, seeding (muscats only), grading, sorting and packaging in various sized containers. * * *

"When such raisins are so prepared for commercial sale and delivery, the packer delivers the same to jobbers, wholesalers, brokers, distributors, and dealers for resale and distribution to the public.

"From the time of the delivery of raisins by the producer to the packer, as set forth herein, the preparation, care, handling, selling and distributing of such raisins is carried on by such packer and all subsequent purchasers and handlers independently of the producer and entirely free from any control or direction of such producer. * * * No producer has any knowledge of the subsequent movement or ultimate use or consumption of the particular raisins delivered by him and has no right, title or interest in

any of such raisins after the sale and delivery by him to the packer. This procedure is carried on by the packer independently of the producer of the raisins who has no knowledge nor means of knowledge as to the ultimate disposition of his particular raisins or as to whether the same ultimately move in intrastate or interstate commerce, except that at times certain producer-packers ship some of their own production directly into interstate commerce."

It will thus be seen that without any prorate provisions in the law, the plaintiff as a packer-dealer would be free to buy and would ordinarily buy the raisins which he boxes and sells in interstate commerce direct from the producer thereof and in amounts limited only by his desire or ability.

Under the Act after a prorate program has been formulated and approved by the commission,³ the agent appointed to administer the program shall issue to the producers certificates as provided in the Act. These certificates are divided into primary and secondary certificates. Each producer shall be entitled to one primary certificate which identifies him as a "producer" under the terms of the Act. The Act, Sec. 20, as amended, Statutes 1939, p. 1948, provides that "secondary certificates shall be numbered consecutively, and shall be used to control the time and volume of harvesting or other preparation for disposal. Such secondary certificates shall accompany all deliveries of the prorated commodity by producers into a primary trade channel",⁴ and it shall be unlawful for any prorated commodity to be delivered into a primary trade channel without the necessary secondary certificate therefor. It is also unlawful for any handler to receive or have in his possession without proper authority any such commodity. The Act contains a further provision that "in the case of commodities which are normally concentrated for preparation

³ The Act creates an Agricultural Prorate Advisory Commission, and sets up procedure for the formulation of an Agricultural prorate marketing program.

⁴ "Primary channel of trade" is defined by the Act to mean "that transaction in which the producer or his cooperative marketing association loses physical possession of the commodity through the sale thereof or other disposition commercially." St. 1935, p. 1527, Sec. 2(j).

for market, the program committee may authorize harvesting of the entire crop for the purpose of delivery to a concentration point and subsequent marketing control."

The program formulated under the Act provides that 20% of all "standard"⁵ raisins shall be delivered into a surplus pool,⁶ the producers to be given an advance of \$27.50 per ton for Muscat and Thompson Seedless raisins, and \$25.00 per ton for Sultanias, the advance to be obtained from the proceeds of a non-recourse loan from the Commodity Credit Corporation, a Federal agency.

Fifty per cent of all standard raisins are to be delivered into a stabilization pool, the producers to receive an advance from the Commodity Credit Corporation funds of \$55.00 per ton for Muscat and Thompson Seedless raisins, and \$50.00 per ton for Sultanias.

The balance of 30% of standard raisins may be disposed of by the producer without restriction as "free tonnage" provided he has obtained a secondary certificate, which certificate is issued to him when he has satisfied the pool requirements and upon payment of a certificate fee of \$2.50 per ton of such free tonnage.

It is provided that no sub-standard or inferior⁷ grade of raisins may be offered as free tonnage or delivered into surplus or stabilization pools, but such raisins are delivered into separate pools for disposal by the program committee at the best prices obtainable and under the fairest conditions obtainable for by-product purposes. The net proceeds

⁵ "Standard raisins" is defined by the Program to mean "raisins of a quality or grade which is equal to, or better than, the quality or grade for standard raisins as determined by the Committee. * * *"

⁶ The program provides for a determination annually of the marketing policy for the marketing season and for the salable, stabilization and surplus percentages to be applied. The stipulation of facts filed herein states the percentages given herein to be the essential features of the 1940 seasonal marketing program for raisins.

⁷ "Sub-standard raisins" is defined by the Program to mean "raisins of a quality or grade below the quality or grade established by the Committee for standard raisins * * *, but which are not inferior raisins." "Inferior raisins" is defined to mean "raisins which are unfit for human consumption, as defined in the Pure Food and Drug Act of the United States of America, 21 U. S. C./A., sec. 1, et seq., as now in force or as hereafter amended."

are distributed ratably to the producers contributing to such pools.

Raisins in the surplus pool may be sold by the committee "as soon as practicable after delivery of the same to the committee . . . provided, however, that none of the standard raisins in such pool shall be sold or otherwise disposed of prior to January 1 of the marketing season in which such pool is established". The Committee determines the prices at which the raisins shall be sold, but it is provided in the program that sales of surplus pool raisins shall be only for assured by-product and other diversion purposes, and that they shall not be sold into normal marketing channels.* There is a provision for transfer of raisins from the surplus pool into the stabilization pool in the event the original estimates were not in accord with later found facts and it later appears that an excessive quantity of raisins has been placed in the surplus pool.

As to the raisins in the stabilization pool, the program provides that they shall be sold by the committee "as soon as practicable after delivery of same to the committee, . . . in such manner as to maintain stability in the markets and to dispose of such raisins". No sales of raisins from the stabilization pool shall be made at less than the prevailing market price for raisins of the same variety and grade on the date of sale. Stabilization pool raisins shall be sold only into normal marketing channels. There is a provision for transfer of raisins from the stabilization pool into the surplus pool in the event of an error in the original estimates of carry-over, etc. In the disposal of stabilization pool raisins "effort shall be made by the committee to effectuate sales in such fashion that the quantity of such stabilization pool raisins sold from time to time shall be coordinated as closely as possible with market demands therefor." (quotation from Program.)

The producers of the raisins have a limited equitable interest in the raisins in the surplus and stabilization pools.

* "Normal marketing channels" is defined to mean "those merchandising channels through which handlers customarily dispose of raisins for human consumption as raisins."

calculated upon a pro rata basis in accordance with the tonnage of each such producer, with adequate and proper differentials for variety and grade, and less deductions for advances made by the committee to such producer.

It will be seen that with the Act and program thereunder in operation, the plaintiff as packer who contracts for delivery of a very large percentage of the raisins he handles directly into interstate commerce, cannot freely purchase raisins directly from the producer, for, except as to the "free tonnage" raisins, he must make his purchase from the Zone representatives under restrictions herein mentioned; and as to the 30% free tonnage he must make his purchases only when the raisins are accompanied by the secondary certificates showing full compliance with the program.

There is in evidence a copy of the "Stabilization Pool Sales Policy" set up by the Zone Agent, which recites that the Program Committee reserves the right to determine the eligibility of packers to purchase stabilization pool raisins, and that in order to be eligible to purchase raisins from the committee a packer must be completely current in respect to payment of secondary proration certificate fees. Another item taken into consideration in the determination of eligibility to purchase raisins is whether or not there has been complete proration of all raisins in the packer's possession or on his premises.

It comes to this, that the plaintiff cannot, without violating the provisions of the program, purchase any raisins for his interstate or intrastate business from a grower who does not have the certificate showing his full compliance with the program, and the evidence is clear that plaintiff took orders for out-of-state delivery which he could not fill by purchase of so-called "free tonnage" raisins and could not fill at all because of the program pool without complying with the program. Nor can he under the regulations prescribed by the Program Committee purchase any raisins deposited in the stabilization pool if he has on his premises or in his possession any raisins that are not accompanied by the certificate showing proration by the grower thereof.

Plaintiff in support of his position that the program formulated under the Act is unconstitutional as a direct interference with his shipping raisins in interstate commerce, cites the case of *Mutual Orange Distributors v. Agricultural Prorate Commission of the State of California*, D. C., 35 Fed. Supp. 108, recently decided by a three judge court sitting in this District but with different District Judges sitting with the Circuit Judge, and defendants seek to distinguish the case on the facts. Notwithstanding its title this cited case has nothing to do with oranges, but is concerned solely with the prorate program for the marketing of lemons. This case will be referred to as the "lemon prorate case". We are of the opinion that notwithstanding factual differences in the two cases, each of them brings very similar principles to bear upon the issues.

Defendants' point of alleged distinction seems to be that in the lemon prorate case the prohibition was on the producers of lemons selling their product in interstate commerce without the secondary certificates provided for in the Act. The lemon proration program prorated among all growers in the State the lemons which could be marketed in primary trade channels. The custom of lemon growers was to sell direct to the trade out of the state. In the instant case the custom of the trade is for the producer of raisin grapes to sell the cured raisins to packers within the state, and the packers in turn sell to jobbers and wholesalers for distribution to the consuming public. The prohibition is on the grower from selling, and the packer from buying raisins on which a secondary certificate has not been issued. The argument is that this is an intrastate transaction, and therefore the program attaches before the raisins have entered interstate commerce, and that it cannot be said that the program constitutes a direct interference with interstate commerce.

Championing the constitutionality of the program the defendants invoke the principle that a State may legally use its police power in the interest of the welfare of its people, even to the extent of affecting interstate commerce. This principle, with its limitations, was discussed by the Supreme Court in *Simpson v. Shepard*, 230 U. S. 352, 399, in the following language:

"The power of Congress to regulate commerce among the several states is supreme and plenary. * * * The conviction of its necessity sprang from the disastrous experiences under the Confederation, when the states vied in discriminatory measures against each other. In order to end these evils, the grant in the Constitution conferred upon Congress an authority at all times adequate to secure the freedom of interstate commercial intercourse from state control, and to provide effective regulation of that intercourse as the national interest may demand. * * *

"The grant in the Constitution of its own force, that is, without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. * * *

"Thus the states * * * have no power to prohibit interstate trade in legitimate articles of commerce (citing cases). * * *

In *Lemke v. Farmers Grain Co. of Embden*, 258 U. S. 50, 42 S. Ct. 244, 66 L. ed. 458, the Supreme Court had under consideration the constitutionality of a state statute which required purchasers of grain to obtain a license and pay a license fee, and to act under a defined system of grading, inspection and weighing. The defendants in that case, as in the instant case, relied upon the principle that a state may make local laws under its police power which may stand until Congress takes possession of the field under its superior authority to regulate commerce among the States. The Supreme Court rejected the defendants' argument, stating (258 U. S. page 59, 42 S. Ct. page 247, 66 L. ed. 458),

"This principle has no application where the State passes beyond the exercise of its legitimate authority and undertakes to regulate interstate commerce by imposing burdens upon it."

The Court reaffirmed its decision in *Simpson v. Shepard*, supra, and applying the principles laid down in that case,

held that the statute under consideration was unconstitutional in that it denied the privilege of engaging in interstate commerce *except to dealers by state authority*. And in *United Leather Workers International Union v. Herkert Meisel Trunk Co.*, 265 U. S. 457, (p. 467) 44 S. Ct. 623, 68 L. ed. 1104, 33 A. L. R. 566, the Supreme Court said the statute under consideration in the Lemke case was a direct limitation on interstate commerce.

In *Grandin Farmers' Co-op Elevator Co. v. Langer*, Dist. Co. No. Dak. S. W. Div., 1934, 5 Fed. Supp. 425, affirmed without opinion, 292 U. S. 605, 54 S. Ct. 772, 78 L. ed. 1467, the state statute under consideration declared an embargo on its wheat when prices became so low as to become confiscatory. The Court said (5 F. Supp. page 427),

"The state has no power to interfere directly with interstate commerce, regardless of economic conditions. The regulation of such commerce is a matter of national concern. . . . If one state or all the states could place embargoes upon the export of the products of their mines, forests, fields, and oil wells, an inconceivable condition of national insecurity would follow. . . ."

"A state statute which, by its necessary operation, directly interferes with or burdens interstate commerce is a prohibitive regulation and invalid, regardless of the purpose for which it was enacted (citing cases)."

We think the case of *Champlin Refining Co. v. Corporation Commission of Okla.*, 286 U. S. 210, 52 S. Ct. 559, 76 L. ed. 1062, 86 A. L. R. 403, although sometimes asserted as such, is not authority for the contention that practically unlimited proration of a state's product is within the power of the state. In that case the Supreme Court had under consideration a state statute which curtailed *production of oil to prevent waste*. It was there held that production of oil is a mining operation and not a part of interstate commerce even though the product obtained is intended to be and in fact is immediately shipped in such commerce.

In considering the *Champlin Refining Co.* case, *supra*, the case of *West v. Kansas Natural Gas Co.*, 221 U. S. 229, 31 S. Ct. 564, 55 L. ed. 716, 35 L. R. A., N. S., 1193, should

also be taken into consideration. In the West case the state act prohibited foreign corporations from laying pipe lines across highways and transporting natural gas therein to points outside the state. It further provided that domestic corporations must transmit gas only between points in the state, and shall not transport or deliver gas to corporations or persons engaged in transporting or furnishing gas to points outside the state. In holding this statute unconstitutional, the Court distinguished between the police power of the State to regulate the *taking* of a natural product, such as natural gas, from its natural placement, and prohibiting that product from transportation in interstate commerce after removal from its natural placement, saying that the former is within, and the latter beyond, the power of the State. It is stated that gas, *when reduced to possession*, is a commodity and belongs to the owner of the land. It is his individual property subject to sale by him, and may be a subject of intrastate commerce and interstate commerce. A state statute which attempts to prohibit its being a subject of interstate commerce is unconstitutional.

In the light of the broad grant of power given Congress over interstate commerce and the principles laid down by the Supreme Court as herein outlined, the necessary effect upon interstate commerce of the raisin prorate program must be scrutinized, and this with the principle in mind that one challenging the validity of a state enactment is not necessarily bound by the legislative declarations of purpose. It is open to him to show that the practical operation of the statute or of any program devised under the authority of such statute directly burdens or effectively prevents the free flow of interstate commerce. *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1, 49 S. Ct. 1, 73 L. ed. 147.

It may here be stated that the inhibition of the program is not based upon crop limitations or upon the health of the consumer or protection of the industry through exclusion from the market of unfit fruit. Such cases as *Sligh v. Kirkwood*, 237 U. S. 52, 32 S. Ct. 501, 59 L. ed. 835, are not in point. And it is not based upon false labeling or deceptive packaging. Neither is it a statute regulating proper conditioning of the commodity prior to its being offered to the

consumer. Nor is it a limitation upon submitting ripe grapes to a proper process whereby the grape becomes a marketable raisin. The stipulation itself speaks of the sun dried grape as a "raisin" before it is removed from the vineyard and before it is stemmed, cleaned or packaged.

No facts, claims or argument in this case have been related to the part of the program designated "Green Diversion". There have been no steps taken to change the production of raisins in quantity either above or below the growers' own judgment or desire. We are constrained to hold and do hold that the production of raisins is complete when the grapes dry and cure into raisins. This natural process of drying and curing takes place on the premises where the grapes are grown, and is accomplished without the intervention of anyone either in cooperation or otherwise with the producer (farmer, grower). When the grapes are so dried and cured they are substantially ready for market as raisins. The process of stemming, cleaning, etc. which is not uniform in packing plants, tends to make the raisins more desirable commercially and thus create a greater demand for them in the market, but is not essential to production. It is our opinion that the prorated program as presented in this case does not attach to or impinge upon "production".

Townsend v. Yeomans, 301 U. S. 441, 57 S. Ct. 842, 81 L. ed. 1210 is cited as authority for the constitutionality of the Act and program thereunder. There a State statute fixing reasonable maximum charges for the services of warehousemen handling tobacco was held constitutional.

The following quotations from the Yeomans case indicate how widely different the state regulation there concerned is from the one before us:

"... we find no ground for concluding that the state requirements lay any *actual* burden upon interstate or foreign commerce. The Georgia Act does not attempt to fix the prices at the auction sales or to regulate the activities of the purchasers. The fixing of reasonable maximum charges for the services of the warehousemen in aid of the tobacco growers does not militate against any interest of

those who buy." 301 U. S. page 455, 57 S. Ct. page 849, 81 L. ed. 1210. (*Italics the Court's.*)

"(quoting from *Cargill Co. v. Minnesota*, 180 U. S. 452, 470, 21 S. Ct. 423, 45 L. ed. 619) 'The statute puts no obstacle in the way of the purchase by the defendant company of grain in the State or the shipment out of the State of such grain as it is purchased.'"

301 U. S. page 457, 57 S. Ct. page 850, 81 L. ed. 1210.

"Here, the Georgia Act lays no constraint upon purchases in interstate commerce, does not attempt to fix the prices or conditions of purchases, or the profit of the purchasers. It simply seeks to protect the tobacco growers from unreasonable charges of the warehousemen for their services to the growers."

301 U. S. page 459, 57 S. Ct. page 850, 81 L. ed. 1210.

While it is true that the program purports merely to prevent and regulate the sale of raisins to the packer under the universal custom of his cleaning, stemming and packaging them within the State, the raisins on the producing premises and those stored by the program committee are at all times kept from market except through the operation of the program. It is impossible to avoid the conclusion that the purpose and necessary effect of the program is to place a controlled embargo on the State's raisin production, in order to effect and stabilize prices. It seems clear to us that the program is frankly and simply a means of controlling the supply of raisins into interstate trade channels to meet the market demands. As to this purpose it is not in our province to comment. We think the State has attempted to accomplish this result by a process which impinges upon a grant of power to the Federal government. The following quotation from the Program is illustrative:

"Secondary Certificates shall be issued to control the time and volume of movement of salable raisins into the primary channels of trade." (Article XI, Sec. 1 (b).)

The Program gives the Committee the power to sell the pooled raisins "in such manner as to maintain stability in the markets", and provides that no sales "shall be made

at less than the prevailing market price for raisins of the same variety and grade on the date of sale", and "effort shall be made by the Committee to effectuate sales in such fashion that the quantity of such stabilization pool raisins sold from time to time shall be coordinated as closely as possible with market demands therefor".

The "Stabilization Pool Sales Policy" set up by the Committee provides for opening prices ranging from \$55.00 per ton for Sultanas to \$60.00 per ton for Thompson Seedless Raisins. It is stated "Notwithstanding anything herein to the contrary, the above opening prices will not be reduced by the sales policy committee of the Surplus Marketing Administration within sixty (60) days from the effective date hereof (Jan. 1, 1941)."

In a printed communication sent out by the Proration Program Committee to the raisin producers within the zone, it is stated that the program " . . . was based upon the idea . . . that a large part of the 1940 crop should be placed in pools under Committee supervision to prevent a flooding of the few available markets, with the inevitable price decline which goes with flooded markets".

By every authority of our acquaintance the enforcement of the implementing program under the Act constitutes a direct and illegal interference with interstate commerce.

It is no answer in principle to say that under the terms of the program 30% (free tonnage) of produced raisins are available for the open market. This percentage is fixed by the program as best calculated to serve its purposes, it might be 15% of the crop or none at all. The vice of the situation is that the program requires the submission of any properly marketable part of the crop to its terms, all of which are directed to the control of the commodity into commerce. It is the judgment of the program administrators that such purpose will be advanced with the freeing of 30% of the crop at the beginning of the 1940-1941 season's market. After the release of the 30% free tonnage the amount of raisins which may be released for absorption by the market equated from the pool is also wholly within the judgment of the prorate authorities.

We are reminded of Mr. Justice McKenna's illustration in the case of *Heisler v. Thomas Colliery Company*, 260

U. S. 245, 43 S. Ct. 83, 84, 67 L. ed. 237, wherein he sustains the State's right to a tax on coal "washed or screened, or otherwise prepared for market" and remarks that if the subject matter is under Congressional jurisdiction because the coal will enter interstate commerce "The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West, etcetera." But, on the other hand, if the State of California has the power to execute a control plan of its entire fruit crop and permit it to enter the market for consumption only as and when its administrators adjudge proper, then every state can so control all industries and crops within its boundaries by the same token. This presents a condition certainly no less repugnant to our dual system of State and Federal government than that illustrated by Mr. Justice McKenna, a condition in the situation confronting us which the constitutional fathers sought to guard against by writing the commerce clause into the Constitution itself. (See hereinbefore quoted portion of the opinion in the case of *Grandin Farmers' Co-op Elevator Co. v. Langer*, supra.) In our opinion the State has ventured upon a sphere of governmental activity which impinges upon a constitutional provision which the framers of the Constitution recognized as necessary to the national status of the several states in their Union.

It is our duty to declare the law as we see it. We cannot however fail to appreciate the economic effect of our decision in this case. It may not be out of place therefore to mention here the highly fortunate circumstance that there is federal law and administrative machinery available by which a proper and legal proration of the raisin crops may be accomplished if such is generally held to be desirable.

The petition for a decree permanently enjoining the defendants from enforcement of the raisin prorate program hereinbefore referred to is granted. The relief sought by defendants in their cross complaint is denied. Plaintiffs may draw findings of fact and conclusions of law in conformity with the expressions of this opinion.

In view of the fact that the case was submitted solely on the question of the constitutionality of the program, we do not consider the defenses of estoppel and the statute of limitations raised by the defendants in their pleadings.

Brown v. Parker, 39 Fed. Supp. 895, at 902-906.

“YANKWICH, *District Judge* (dissenting):

“The control of the Congress over interstate commerce, United States Constitution, Art. I, Sec. 8, Cl. 3, being absolute, any direct interference with it by any State must give way. But this Congressional primacy does not stand in the way of regulations by the States, through the exercise of their taxing or police powers, which, although local in their nature, affect interstate commerce. See *The Minnesota Rate Cases*, 1913, 230 U. S. 352, 399, 33 S. Ct. 729, 57 L. Ed. 1511, 48 L. R. A., N. S., 1151, Ann. Cas. 1916A, 18; *Milk Control Board v. Eisenberg Farm Products*, 1939, 306 U. S. 346, 351, 59 S. Ct. 528, 83 L. Ed. 752; *United States v. Rock Royal Co-Op.*, 1939, 307 U. S. 533, 569, 59 S. Ct. 993, 83 L. Ed. 1446; *Mulford v. Smith*, 1939, 307 U. S. 38, 48, 59 S. Ct. 648, 83 L. Ed. 1092.

“In a recent case (*California v. Thompson*, 1941, 61 S. Ct. 930, 932, 85 L. Ed. —), Mr. Justice Stone has stated the extent of compatibility of state regulation with national supremacy in the field of interstate commerce in these words:

“As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of local concern with respect to which Congress has not exercised its power, even though the regulation affects interstate commerce. Ever since *Wilson v. Blackbird Creek Marsh Co.*, 2 Pet. 245, 7 L. Ed. 412, and *Cooley v. Board of Port Wardens*, 12 How. 299, 13 L. Ed. 996, it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce, but which because of their local character and their number and diversity may never be adequately dealt with by Congress. Because of their local character, also, there

is wide scope for local regulation without impairing the uniformity of control of the national commerce in matters of national concern and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause. Notwithstanding the Commerce Clause, such regulation in the absence of Congressional action has, for the most part, been left to the states by the decisions of this Court, subject only to other decisions of this Court, subject only to other applicable constitutional restraints. See cases collected in *Di Santo v. Pennsylvania*, supra, 273 U. S. (34) 40, 47 S. Ct. 267, 71 L. Ed. 524'.

"When we consider Congressional regulation of interstate commerce, we must, as students of late juristic trends, concede that recent decisions, such as those sustaining the National Labor Relations Act, 29 U. S. C. A. Sec. 151 et seq. (*National Labor Relations Board v. Jones-Laughlin Corp.*, 1937, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A. L. R. 1352) and the Fair Labor Standards Act, 29 U. S. C. A. Sec. 201 et seq. (*United States v. Darby*, 1941, 312 U. S. 100, 61 S. Ct. 451, 85 L. Ed. —, 132 A. L. R. 1430), extend the power of the Congress to dominate purely local conditions, through the exercise of its absolute control over interstate commerce."

But this *does not mean* that because a product is destined for interstate commerce, or a business aims at interstate commerce, it is, *by this very fact*, without the ambit of state regulation. Carriers or persons engaged in transportation in interstate commerce may be subjected to many state regulations. See their enumeration by Mr. Justice Stone in *California v. Thompson*, 1941, 61 S. Ct. 930, 85 L. Ed. —. So, also, may the taxing power of a state be used to tax products originating in, or intended for, interstate commerce, either before leaving the state or after reaching it. See *Henneford v. Silas Mason Co.*, 1937, 300 U. S. 577, 57.

* These decisions overrule all the cases, such as *Hammer v. Dagenhart*, 1918, 247 U. S. 251, 38 S. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724, and *Carter v. Carter Coal Co.*, 1936, 298 U. S. 238, 56 S. Ct. 855, 80 L. Ed. 1160, which, if followed, would have made it impossible for the Congress to influence, by indirect regulation, industrial relations within state confines.

S. Ct. 524, 81 L. Ed. 814; *Ford Motor Company v. Beauchamp*, 1939, 308 U. S. 331, 60 S. Ct. 273, 84 L. Ed. 304; *Felt & Tarrant Manufacturing Co. v. Gallagher*, 1939, 306 U. S. 62, 59 S. Ct. 376, 83 L. Ed. 488; *Pacific Tel. & Tel. Co. v. Gallagher*, 1939, 306 U. S. 182, 59 S. Ct. 396, 83 L. Ed. 595; *McGoldrick v. Berwind-White Co.*, 1940, 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A. L. R. 876.

While the rigid distinction between production and commerce no longer holds in so far as the exercise of congressional restraint and regulation is concerned, (See *United States v. Darby*, 1941; 312 U. S. 100, 61 S. Ct. 451, 85 L. Ed. —, 132 A. L. R. 1430), it is still maintained when we come to assay the exercise of state powers. In a leading case on the subject, (*Heisler v. Thomas Colliery Co.*, 1922, 260 U. S. 245, 43 S. Ct. 83, 86, 67 L. Ed. 237), Mr. Justice McKenna stated the principle in these words:

“We may, therefore, disregard the adventitious considerations referred to and their confusion, and by doing so we can estimate the contention made. It is that the products of a state that have, or are destined to have, a market in other states *are subjects of interstate commerce*, though they have not moved from the place of their production or preparation.

“The reach and consequences of the contention *repels its acceptance*. If the possibility, or indeed certainty, of exportation of a product or article from a state determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. *It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet “on the hoof”, wool yet unshorn, and coal yet unmined because they are in varying percentages des-*

ined for and surely to be exported to states other than those of their production. *Heisler v. Thomas Colliery Co.*, 1922, 260 U. S. 245, 259, 43 S. Ct. 83, 67 L. Ed. 237. (Italics added.)

And see *Veazie v. Moor*, 1852, 14 How. 568, 573, 574, 14 L. Ed. 545; *Kidd v. Pearson*, 1888, 128 U. S. 1, 20, 21, 9 S. Ct. 6, 32 L. Ed. 346; *Oliver Iron Co. v. Lord*, 1923, 262 U. S. 172, 178, 179, 43 S. Ct. 526, 67 L. Ed. 929.

The act there before the Court subjected every ton of anthracite coal mined, 'washed, screened, or otherwise prepared for market' in the state to a one and one-half percent tax of its value when prepared for market, to be assessed after it is prepared as indicated and 'is ready for shipment or market.' Penn. Laws, 1921, page 479, 72 P. S. Pa. Sec. 2501.

Here was a product, anthracite coal, on which many states depended at the time, for fuel, found only in a small number of counties in the State of Pennsylvania, and, from its very nature, destined for interstate commerce the moment it left the mine. Here was a tax, the effect of which made the cost of production greater and sale in interstate commerce more burdensome. Yet the Court could see in it no assault upon federal supremacy in the realm of interstate commerce.¹⁰

I can see no escape from this conclusion.

Unless we are ready to say that the recent decisions extending congressional power to regulate local conditions, through the exercise of control over interstate commerce, have destroyed the power of the States to deal with products of agriculture or manufacture which are destined for

¹⁰ This case was decided after *Lemke v. Farmers' Grain Co.*, 1922, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458, upon which my associates' finding of unconstitutionality of the raisin program is chiefly bottomed. And the opinion was written by the same justice, Mr. Justice McKenna. The principles it declares have never been questioned. Some of the later cases in which it is cited or followed are: *Oliver Iron Co. v. Lord*, 1923, 262 U. S. 172, 179, 43 S. Ct. 526, 67 L. Ed. 929; *United Leather Workers' International Union v. Herkert & Meisel Trunk Co.*, 1924, 265 U. S. 457, 465, 44 S. Ct. 623, 68 L. Ed. 1104, 33 A. L. R. 566; *Hope Gas Co. v. Hall*, 1927, 274 U. S. 284, 288, 47 S. Ct. 639, 71 L. Ed. 1049; *McGoldrick v. Berwind-White Co.*, 1940, 309 U. S. 33, 47, 60 S. Ct. 388, 84 L. Ed. 565, 125 A. L. R. 876.

interstate commerce before they actually enter the flow of that commerce. Even the most extremists of the newer federalists would not go so far. See Walton H. Hamilton and Douglass Adair, 1937, *The Power to Govern*; Edward Corwin, 1926, *The Commerce Power versus State Rights*; Edward Corwin, 1941, *Constitutional Revolution Limited*.

The thoughts just expressed find support in *Champlin Refining Co. v. Commission*, 1932, 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, 86 A. L. R. 403, which involved the Oklahoma oil prorate law. It is true that oil, being a natural resource, allows, constitutionally, broader regulation both federal and state, than other products of industry or agriculture. And the Court said so. However, the Court, while giving its sanction to the State's regulation upon that score, also dealt specifically with its relation to the interstate commerce clause. And, in finding no conflict with it, the Court did not place its decision upon *the character of oil as a natural resource*. It determined the case upon the ground that the law was a regulation of production before oil entered the flow of interstate commerce. And it found it unobjectionable, although the oil was intended for interstate shipment. The Court said:

" 'Plaintiff contends that the act and proration orders operate to burden interstate commerce in crude oil and its products in violation of the commerce clause. . . . It is clear that the regulations prescribed and authorized by the act and the proration established by the commission apply only to production and not to sales or transportation of crude oil or its products. Such production is essentially a mining operation, and therefore is not a part of interstate commerce, even though the product obtained is intended to be and in fact is immediately shipped in such commerce. *Oliver Iron Co. v. Lord*, 262 U. S. 172, 178, 43 S. Ct. 526, 67 L. Ed. 929; *Hope Gas Co. v. Hall*, 274 U. S. 284, 288, 47 S. Ct. 639, 71 L. Ed. 1049; *Foster Packing Co. v. Haydel*, 278 U. S. 1, 10, 49 S. Ct. 1, 73 L. Ed. 147; *Utah Power & Light Co. v. Pfof*, *supra* (286 U. S. 165, 52 S. Ct. 548, 76 L. Ed. 1038). No violation of the commerce clause is shown.' *Champlin Refining Co. v. Commission*, 1932, 286

U. S. 210, 235, 52 S. Ct. 559, 565, 76 L. Ed. 1062, 86 A. L. R. 403. (Italics added.)¹¹

In effect, this means that the nature of a product does not determine its availability as an object of state legislative control outside of the inhibition of the commerce clause. Rather must the question be determined in the light of the facts in each case. A state embargo upon a product is forbidden. See *Lemke v. Farmers' Grain Co.*, 1922, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458; *Shafer v. Farmers' Grain Co.*, 1925, 268 U. S. 189, 45 S. Ct. 481, 69 L. Ed. 909; *Baldwin v. Seelig*, 1935, 294 U. S. 511, 55 S. Ct. 497, 79 L. Ed. 1032, 101 A. L. R. 55. But state enactments or programs which affect, *indirectly*, either through regulation or taxation, the quantity of a product available for use in interstate commerce before it enters it, do not, as I read the cases, impinge upon the commerce clause.¹² To hold otherwise is to bring about the conditions which Mr. Justice McKenna

¹¹ The California Agricultural Prorate Act was enacted on June 5, 1923, St. 1923, p. 1969, after the decision in *Champlin Refining Co. v. Commission*, 1932, 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, 86 A. L. R. 403, which was filed on May 16, 1932. It was modeled after the Oklahoma Oil prorate statute which the Court had before it in that case. Its definition of "waste" is almost identical with that in the Oklahoma Statute. It reads:

"The terms 'agricultural waste'—in addition to their ordinary meaning—shall include economic waste, and waste incident to the harvesting and/or preparation for any delivery to market of agricultural commodities in excess of *reasonable market demands*." (Calif. Stats. 1933, Ch. 754, Sec. 2, as amended by St. 1935, p. 1527(b).) (Italics added.)

The definition of waste in the Oklahoma Statute, 52 Okl. St. Ann. Sec. 273 (as found in a footnote to page 223 of 286 U. S., 52 S. Ct. at page 560 of the opinion) reads:

"That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or *reasonable market demands*." (Italics added.)

¹² A very recent illustration of judicial sanction for a state regulation of the handling of what might be called an inherently interstate commodity, tobacco, is found in *Townsend v. Yeomans*, 1937, 301 U. S. 441, 57 S. Ct. 842, 81 L. Ed. 1210.

envisaged in *Heisler v. Thomas Colliery Co.*, supra. It is to remove every product, the sale of which is ultimately an interstate act, from local control. For if every regulation which may affect the quantity of the product available for interstate shipment be violative of the commerce clause, state statutes regulating the quantity and conditions of production of an article of commerce, or the wages or hours and conditions of labor of employees producing it, must go by the board. And the reason is obvious. For such legislation, from an economic standpoint, ultimately affects production. It increases the burden upon production and discourages those who consider the burden oppressive from engaging in such enterprise.

And this is true, whether we consider restrictions on working hours of men (California Labor Code, St. Cal. 1937, p. 205, et seq., Secs. 510-856) or of women and children (California Labor Code, Secs. 1171-1398, p. 213 et seq.) regulations of the manner of payment of wages (California Labor Code, Secs. 200-452, p. 201 et seq.), minimum sanitation requirements (California Labor Code, Secs. 2330-2425, p. 253 et seq.), or laws establishing employers' liability (California Labor Code, Secs. 3201-6002, p. 265 et seq.), or decreeing safety devices (California Labor Code, Secs. 6300-7601, p. 306 et seq.)

They all increase cost and, therefore, diminish the quantity of production. It is also axiomatic that free, unregulated, anarchic enterprises attract the intrepid and adventurous in the economic field more readily than strictly controlled ventures. Control thus diminishes production in existing establishments and discourages increase in the number of enterprises.

It follows that if the fact that a product is destined for interstate commerce, automatically places it without the scope of state control, then control of the type enumerated is immediately nullified.

To bring these thoughts to bear upon the problems before us.

Raisins as produced by the grower, through the drying and sweating process, from grapes grown on his land, are not an article of commerce. They are not ready for ship-

ment or market. Nor are they fit for human consumption. Before they may be served as human food, the packers must process them through a complicated process. This alone makes them palatable and fit for use. The State of California has undertaken, through this legislation, and the program intended to carry it into effect, to impose certain regulations, to pool a portion of the crop and to restrict free sales as between the growers and the packers. This program, which derives its sanction from the assent of the growers, deals entirely with raisins before they enter the flow of interstate commerce. I grant that its effect is to restrict freedom of action in dealings between growers and packers within the state. If this result in making raisins unavailable to recusants like the plaintiff, except upon compliance with certain conditions, this is no more a direct burden on interstate commerce than was the tax on anthracite coal (*Heisler v. Thomas Colliery Co.*, supra), without the payment of which no anthracite coal was available for shipment in interstate commerce, or the curtailment of oil production through proration, (*Champlin Refining Co. v. Commission*, supra), which reduced directly the quantity of oil available for shipment in interstate commerce.

Hence my dissent from the conclusion reached by my colleagues."

No. 4040 46

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

Office - Supreme Court, U. S.

FILED

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vs.

PORTER L. BROWN,

Appellee.

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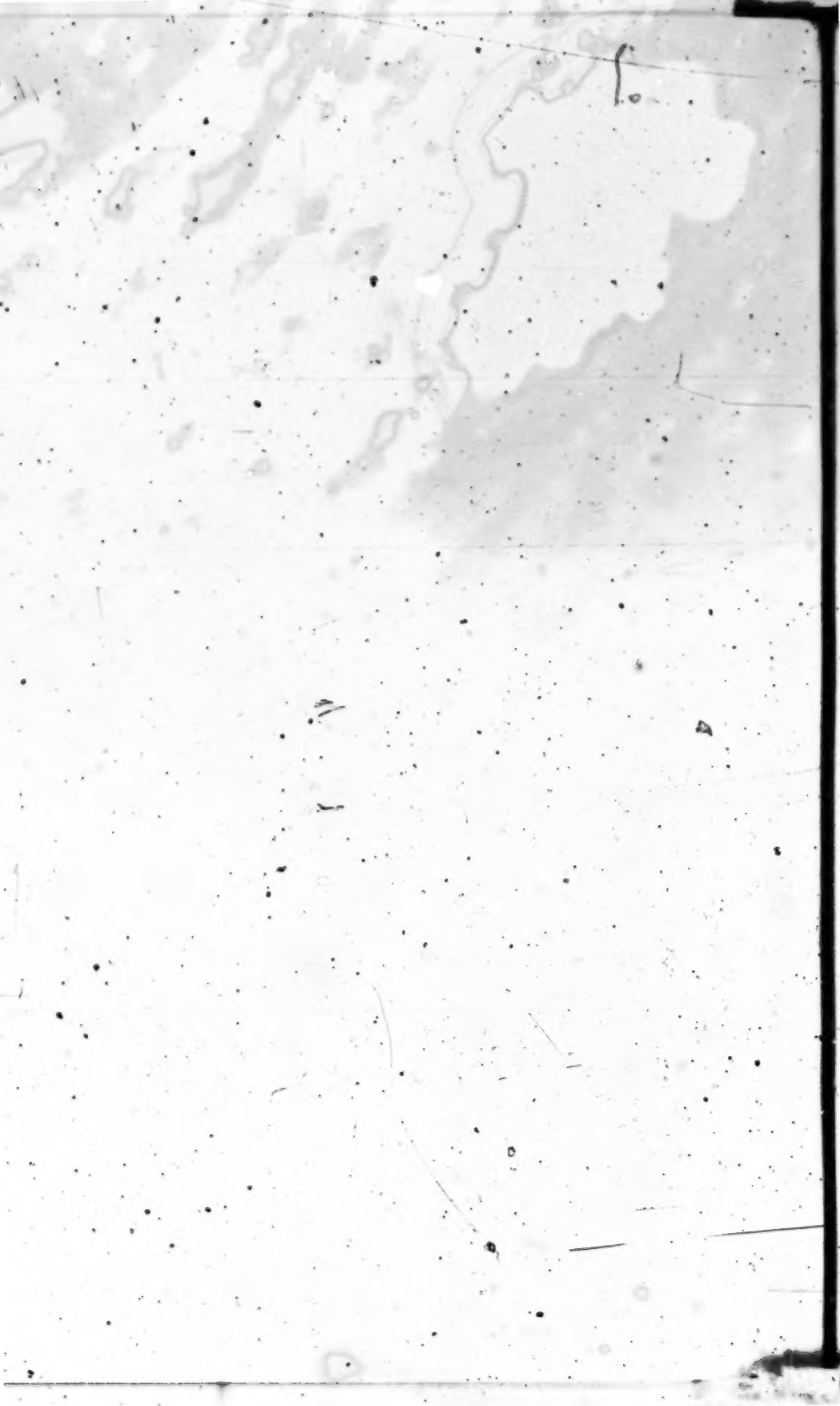
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No. 1040
IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

W. B. PARKER, Director of Agriculture, AGRICULTURAL
PRORATE ADVISORY COMMISSION, RAISIN PRORATION
ZONE No. 1, PROGRAM COMMITTEE; W. B. PARKER,
IRA REDFERN, LYMAN LANTZE, JAMES LANGFORD,
MARK G. JOHNSON, C. M. BROWN, WM. F. DARSIE,
DR. DEAN MCHENRY, PRESTON MCKINNEY, H. C.
ANDERSON, A. K. KELLY, RENALD MASTROFINI, ALEX.
BERG, MESROB MIRIGIAN, MELCHIOR HANSEN, A. L.
DAVIDSON, W. J. CECIL and J. C. HARLAN,

Appellants,

vs.

PORTER L. BROWN,

Appellee.

BRIEF ON BEHALF OF APPELLANTS.

**REFERENCE TO REPORT OF OPINION OF
LOWER COURT.**

The official report of the opinion of the United States District Court for the Southern District of California, Northern Division, the lower court from which the appeal is taken in this proceeding, is found in *Brown v. Parker*, 39 Fed. Supp. 895, and is set forth in full in the Statement as to Jurisdiction herein as Exhibit 2 thereof, pages 39 to 61, inclusive.

JURISDICTIONAL STATEMENT.

A Statement as to Jurisdiction was filed herein as required setting forth the grounds on which the jurisdiction of this court is invoked, and probable jurisdiction was noted on April 6, 1942.

STATEMENT OF THE CASE.

This is an appeal from the final decree of the District Court of three-judges (Judicial Code Sections 238(3) and 266; 28 U. S. C. A. 345(3) and 380) which enjoined appellants, the defendants below, officials of the State of California, from enforcing against appellee, "in his capacity as a producer, buyer, packer or handler of wholesome and sound raisins, but not as to unwholesome, unsound or inferior raisins", the Seasonal Marketing Program for Raisins for 1940-1941 adopted pursuant to the provisions of the Agricultural Prorate Act of the State of California "and from in any manner annoying, harassing or molesting plaintiff or persons doing such business with plaintiff", upon the ground that the same "constitutes and is a direct, substantial, and unconstitutional interference with interstate and foreign commerce in wholesome and sound raisins."

The Statute in Question.

The statute in question is known as the California Agricultural Prorate Act. The original Act became effective June 5, 1933 (Stats. 1933, Ch. 754). It has been amended at subsequent sessions of the Legislature down to and including 1941 (Deering's General Laws 1937, Act 143a,

page 60, 1939 Supplement, page 993, 1941 Supplement, page 1846). The statute itself has been held constitutional (*Agricultural Prorate Com. v. Superior Court*, 5 Cal. (2d) 550; *Whittier Mutual O. & L. Ass'n v. Agricultural Prorate Comm.*, 11 Cal. (2d) 470, 473). and its validity is not here attacked by the appellee. [R. 71.]

Marketing Program.

No attack whatever has been made upon the validity of the Marketing Program for Raisins. It is stipulated "that pursuant to the provisions of the Agricultural Prorate Act a proration program for raisins in said zone was instituted August 4, 1937, and continued in effect until it was amended effective July 23, 1940, by the Marketing Program for Raisins, as Amended, as set forth in Exhibit 'A' attached to the Answer to First Amended Complaint herein, which program as thus amended ever since has been and still is in force and effect." [R. 18, para. 12.] This Marketing Program for Raisins, as Amended, issued July 23, 1940, is set forth in full as Exhibit 1 in the "Statement as to Jurisdiction," being pages 7 to 37, inclusive thereof.

The "zone" referred to is designated as "Raisin Proration Zone No. 1" and consists of the counties of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings and Kern, in the State of California, and within which territory practically all of the raisins in that state are produced.

1940-41 Seasonal Marketing Program.

Article III of the "Marketing Program for Raisins, as Amended" (Statement as to Jurisdiction, pp. 14-16) makes provisions for a seasonal marketing program. It is stipulated "that pursuant to the provisions of said program * * * and particularly under the terms of Article III thereof, a Seasonal Marketing Program for Raisins for 1940-41 was duly and regularly adopted and approved effective September 7, 1940, which seasonal program is and has been ever since said date in force and effect in said Zone." [R. 18, par. 12.]

The Marketing Program for Raisins as Amended" defines "standard", "substandard" and "inferior" raisins. (Statement as to Jurisdiction, p. 10.) In the same program (Statement as to Jurisdiction, p. 9) "raisins" are defined to be "unbleached sun-dried or partially sun-dried grapes of the Thompson Seedless, Sultana, and Muscat varieties, grown in the zone."

The essential features of the 1940-41 Seasonal Marketing Program are that 20% by variety of all "standard" raisins of the 1940 crop produced within the zone shall be delivered by the producers into a "surplus" pool on which an advance to producers shall be made at time of delivery of \$27.50 per ton for Muscat and Thompson Seedless and \$25.00 per ton for Sultanas to be obtained from a non-recourse loan of the Commodity Credit Corporation; that 50% by variety of all such "standard" raisins shall be delivered by the producers into a "stabilization" pool on which a similar advance shall be made of \$55.00 per ton for Sultanas from the same source. The balance of such "standard" raisins (30%) may be disposed of by the producers without restriction into a primary channel of trade

as "free tonnage", provided the producer has obtained a secondary certificate therefor to which he is entitled when he has delivered the corresponding percentages into the "surplus" and "stabilization" pools and paid his certificate fee of \$2.50 per ton on such 30% free tonnage. No "sub-standard" or "inferior" raisins may be sold or disposed of or offered into any primary channel of trade as "free tonnage" nor delivered into either the "surplus" or "stabilization" pools, but shall be delivered into separate pools for disposal by the program committee for by-product purposes at the best obtainable prices, the net proceeds thereof to be distributed ratably to the producers contributing to the same. [R. 18-19, par. 13.]

The Raisin Industry.

Raisins constitute one of California's major agricultural industries, being exceeded in volume and value by few other crops. The world production of raisins exceeds that of any other dried fruit with the possible exception of dates. California is the largest producer furnishing about half of the world crop in most years.¹

Practically all dried fruits produced in the United States come from California. The raisin vine was introduced into California in 1851. In 1879 the crop first exceeded 1,000,000 pounds. In 1885 it amounted to over 9,000,000 pounds. It now averages around 200,000 tons or 400,000,000 pounds. Prices to growers have ranged from as low as $\frac{3}{4}$ ¢ per pound to 7¢ per pound. During periods

¹Raisin Market Information Bulletin No. 274, Federal-State Market News U. S. Dept of Agriculture.

of low returns to the grower it is estimated that in Fresno County alone 20,000 acres of vines have been pulled up.²

In 1926 and 1927 the annual production of California raisins reached an average of 278,000 tons and 347,000 acres were planted to raisin grapes. Both the planted acreage and the annual production has since been considerably reduced.

The actual cost of producing raisins naturally varies to a considerable degree and exact figures are difficult to obtain. Generally speaking from $2\frac{1}{2}\text{¢}$ to 3¢ per pound or \$50.00 to \$60.00 per ton is considered a fair average cost for the production of raisins.³ Over a great part of the last ten years farm prices of raisins have failed to return the cost of production to many growers if items such as interest on investments and charges for producers' own labor are included in the cost.⁴

Between 1930 and 1938 the price to growers ranged from a low of \$39.00 per ton in 1932 to a high of \$70.00 per ton in 1936. During the same period the packed price per ton received by packers was \$66.00 in 1932 and \$96.00 in 1936.⁵ During the same period the annual carry over of raisins in California on September 1st ranged from 50,000 tons in 1937 to 105,000 tons in 1933.

²State Horticultural Commission Report of California 38th Fruit Growers Convention, p. 92.

³Enterprise Efficiency Studies, Agricultural Extension Service, University of California.

⁴An Analysis of Raisin Marketing by Malcolm H. Watson, 1940, University of California, Division of Agricultural Economics, pp. 7-8.

⁵Deciduous Fruit Statistics, S. W. Shear, Giannini Foundation, University of California.

As confined to "raisins" defined in the program and within the territory of "Zone No. 1", there are approximately 240,000 acres devoted to the growing of grapes utilized wholly or in part for the manufacture of raisins, which acreage is held and operated by approximately 10,000 producers, the average individual holding of each producer being about 25 acres. [R. 14, par. 2.]

For the five year period prior to the 1940-41 Seasonal Marketing Program the average annual production of raisins in said zone was approximately 205,600 tons and the distribution thereof in normal trade channels averaged approximately 185,000 tons. [R. 14-15, par. 3.]

The producer of grapes is generally either the owner or the lessee of the land on which the vines are located. He plants, cultivates, irrigates, sprays and tends the vines upon which the grapes are grown and when the fruit matures picks the same. Such grapes may be sold either as fresh fruit or for wine or prepared as raisins. The amount utilized for these different purposes varies considerably from year to year both in the aggregate and with the individual producer. The grower picks the bunches of grapes to be utilized for raisins and spreads them on trays laid between the rows of vines, turns the trays from time to time and finally dumps the dried grapes into sweat boxes or picking boxes. He grades the dried grapes for quality and to eliminate "substandard" and "inferior" raisins, although sometimes this is left to be done by the packer to whom the raisins are sold. When the producer is ready to deliver his raisins he hauls the same in the sweat boxes or picking boxes to the packing plant, or employs independent truckers for that purpose, and in some cases the packer calls and takes delivery in the vineyard. [R. 15, par. 4.]

There are approximately 40 packers of raisins within the State of California, all of whom have packing plants and places of business located within the zone. They make all their purchases and take all their deliveries of raisins from the producers within the State of California. [R. 15, par. 5.] Of these 40 packers, the five largest ones handle approximately 75% of the raisin crop and the ten largest handle around 85%, leaving 15% to be handled by the remaining 30 packers. [R. 119-20.]

The sale of the raisins by the producers to the packers is purely an intrastate transaction and is all consummated within the State of California and within Zone No. 1. Practically all such sales are cash transactions and the sale is completed when the delivery is made, the producer receiving full payment immediately or within ten days. [R. 15, par. 6.]

Before the raisins are delivered by the producers to the packers they have been cured on the premises of the producer but have not been in any other manner prepared for market. They are delivered in the sweat boxes or picking boxes in which the producer dried them and are in clusters attached to the dried stems upon which they matured. [R. 15, par. 7.] When the raisins are received by the packer in such condition they are not the subject of trade or commerce except in the transaction between the producer and the packer as heretofore described and in occasional sales from one packer to another. [R. 119.] They are never sold to the trade or to the consumer for human consumption in that form. [R. 121, lines 4-8.] They are not fit for commercial use until they have been stemmed and cleaned. [R. 120, lines 35-6.]

The grapes mature and are generally dried and ready for delivery beginning sometime between September 15th and 30th. Producers sell practically all of their crop to the packers within ninety days after this time. Few, if any, producers are financially able to carry their own raisins and they are forced to sell and deliver them during this ninety-day period in order to procure money with which to finance their agricultural operations and to take care of the succeeding crop. [R. 17, par. 11.]

The packer, on the other hand, maintains a stock of raisins on hand at all times throughout the entire year in order to supply the trade. As the raisins come in from the producers during this ninety-day period the packer processes or prepares for market that portion for which he has an immediate demand and stores the remainder for later preparation and delivery throughout the balance of the year or the succeeding year. [R. Cross-ex. 131-33.]

The raisins are stored by the packers in the sweat boxes or picking boxes in which they are received from the producers and are held in such containers by the packers for periods varying from a few days up to two years. The bulk of the raisins carried over for longer periods of time is carried by the larger packers handling the 85% of the total crop, while some of the smaller packers do not carry over any inventory from season to season. [R. 16, par. 8.]

The packer from time to time, as his trade demand warrants, takes the raisins from the containers in which they were received and have been stored and prepares the same for commercial sale and distribution to the public by cleaning, stemming, cap-stemming, seeding the Muscats, grading, fumigating, sorting, treating with heat and oil in some

instances, and packaging in the various size containers. [R. 16, par. 8; R. 104-6, 113-14; Defts. Ex. "A", R. 103 and 109.]

When the raisins have been so prepared for commercial sale and delivery the packer delivers them to jobbers, wholesalers, brokers, distributors and dealers, who in turn resell and distribute them to the consuming public. [R. 16, par. 9.] This sale and delivery from the packer to the jobber or wholesaler, while not wholly intrastate as in the case of the sale and delivery from the producer to the packer, is to a large extent *intrastate* as witness the dealings by the appellee, Brown, whose contracts for sale and delivery as a packer to the various jobbers and wholesalers are *entirely intrastate*. [Plaintiff's Exhibits 1, 3, 4, 8 and 9; R. 72, 73, 74, 75 and 76.] Such raisins are ultimately consumed both within and without the State of California but 90% to 95% of the raisins utilized for human consumption as raisins are ultimately consumed outside of the State of California. [R. 16, par. 9.]

From the time of the delivery of the raisins by the producer to the packer the preparation, care, handling, selling and distribution of the same is carried on by the packer and subsequent handlers wholly independent of the producer and entirely free from any control or direction by him. The raisins of the various producers delivered to any packer are commingled and no producer has any knowledge of the subsequent movement or ultimate use or consumption of the particular raisins produced and delivered by him after the sale and delivery of the same to the packer. The producer has no knowledge nor means of knowledge as to whether his raisins move in *intrastate* or *interstate* commerce. [R. 16-17, par. 10.]

When the current crop of raisins comes on in September of each year the packers have on hand a substantial carry-over of raisins from the crops of the preceding one or two years, which they endeavor to dispose of before selling the current crop. The bulk of this carry-over is, of course, principally held by the larger packers who handle the 85% of the entire crop. [R. 16, par. 8.]

During the past several years the producers of raisins in California have supplied a large surplus over and above the normal market demand and consequently there has been an excessive carry-over of raisins from year to year from the previous crops. [R. 17, lines 24-8.] This annual surplus served to still further accentuate the seasonal gluts that brought about the disastrous conditions which the Legislature and the industry sought to remedy and alleviate by the raisin proration program.

As of September 1, 1940, just prior to the putting into effect of the 1940-41 Seasonal Marketing Program there was a carry-over of approximately 70,000 tons of raisins of the 1938 and 1939 crops in the possession of packers in the State of California. [R. 17, lines 28-31.]

At all times since the Marketing Program for Raisins under the Agricultural Prorate Act was put into effect in 1937 there have been in the hands of such packers large supplies of raisins in excess of the demand therefor and they have at all times had on hand at least from 30,000 to 40,000 tons of raisins more than they were able to sell and dispose of. The packers have been at all of such times abundantly able to supply all orders and demands for raisins both from within and from without the State of California. [R. 17, lines 31-40.] The problem of the

industry has been a marketing problem and not one of supply. [R. 137, lines 15-32.]

When the original Agricultural Prorate Act was adopted in 1933 no provision was made nor authorization given for the establishment of pools, such as stabilization, surplus, etc.

However, in the practical operation of the statute it was found that in the case of the semi-perishable crops which did not pass directly or quickly from the grower to the ultimate consumer, it was necessary to procure some centralized control of the seasonal surplus in order to insure a more regular and even movement of the commodity from the grower into a primary channel of trade.

In the case of semi-perishable crops such as raisins, prunes, etc. the time or regularity of distribution to the ultimate consumer had very little, if any, effect upon the grower. The latter did not produce a finished commodity ready for the ultimate consumer, but only delivered a raw product which had to be processed or otherwise prepared for the retail trade. The packer or processor or manufacturer, as he may be termed, always had on hand an ample supply to take care of the demands of the wholesale trade and the ultimate consumer. The problem confronting the State Government was to afford relief to a grower whose entire season's output matured at one time and who was forced by his urgent need for funds to throw this entire crop upon a surfeited market and accept whatever the packers were willing to pay.

Under the inevitable operation of the law of supply and demand, the packers generally paid the producers only the bare cost of production and in many instances purchased the growers' crops at even less than cost.

The national government has recognized the seriousness of this problem and also the fact that the states alone were financially unable to successfully take care of it.

In 1930 California Grape Control Board, a Federal Farm Board agency, formed the California Raisin Pool and purchased 316,000 tons of raisin grapes, which it left in the vineyards.⁶

In 1934 the Agricultural Adjustment Administration formulated a raisin marketing agreement which was signed by over 80% of the tonnage. The AAA program divided each grower's raisins into 85% "free tonnage" and 15% as the controlled percentage to be diverted to by-products.⁷

Commodity Credit Corporation was created as an agency of the United States in 1933 pursuant to executive order and was incorporated under the laws of Delaware. Its administration was transferred to the Department of Agriculture on July 1, 1939. Its main object and prin-

⁶Watson, An Analysis of Raisin Marketing Controls, *supra*, pp. 15-16; Grapes, Raisins and Wines, U. S. Tariff Comm. 1939, pp. 152-8.

⁷Watson, An Analysis of Raisin Marketing Controls, *supra*, pp. 15-16; Grapes, Raisins and Wines, U. S. Tariff Comm., 1939, pp. 152-8.

principal business has been to make loans to producers to finance the carrying and *marketing* of agricultural commodities.*

Applications for such loans are made to the Secretary of Agriculture and if approved are then referred by him to Surplus Marketing Administration. If this latter agency recommends the loan a detailed draft of the terms is submitted to the President of Commodity Credit Corporation. Such recommended loan is then considered in turn by the Directors of Commodity Credit Corporation, the Secretary of Agriculture, and the Budget Bureau of the United States. If all of these officials and agencies then approve the same the entire proposal is submitted in writing to the President of the United States. If the latter approves the proposed loan he notifies the Secretary of Agriculture in writing and the loan agreement is then entered into between Commodity Credit Corporation and the applicant.

The State of California, through its Director of Agriculture and other officials, carried on extended negotiations with the Federal Government officials in an endeavor to

*U. S. Government Manual, September, 1941, p.: "The Commodity Credit Corporation is essentially a lending institution, making loans principally to producers to finance the carrying and orderly marketing of agricultural commodities. Section 302 of the Agricultural Adjustment Act of 1938 authorizes the Corporation, upon the recommendation of the Secretary of Agriculture with the approval of the President, to make loans on agricultural commodities (including dairy products) and, except as otherwise provided therein, the amount, terms and conditions of such loans shall be fixed by the Secretary of Agriculture, subject to the approval of the Corporation and the President."

work out a means whereby funds could be made available to finance the growers of major agricultural crops in California and insure their continued production. Individual loans were practically impossible and would not insure the *orderly marketing* essential to the Federal Government's object and purpose. As a means of accomplishing this end it was determined that the provisions of the Agricultural Prorate Act could be utilized. The establishment of stabilization and surplus pools provided both a means of security for the loan and for the *orderly marketing* essential to the Federal purpose.

Under a somewhat similar Seasonal Marketing Program for Raisins for 1938-39 the Commodity Credit Corporation made approximately \$9,000,000 available for loans on the 1938 crop through the program. Prior to placing in effect the Seasonal Marketing Program for 1940-41, negotiations were again entered into between the State and Federal officials and after due and careful investigation the Commodity Credit Corporation made available an \$8,000,000.00 loan upon the express condition that the program here under consideration be made effective and maintained in operation. [R. 19, par. 14.] This explains the reference in such seasonal marketing program to the advances to be made to producers of raisins placed in the "stabilization" and "surplus" pools from funds to be obtained from the Commodity Credit Corporation.

The 1940 raisin crop produced within the Zone was the lightest in many years, totaling only 157,300 tons. Of this 47,190 tons were "free tonnage" available at all times to be disposed of by the growers to the packers, 78,650 tons were delivered into the "stabilization" pool and 31,460 tons into the "surplus" pool. Of the \$8,000,000.00 made

available by the Commodity Credit Corporation, \$5,174,423.64 was actually borrowed on the 110,110 tons of raisins in the two pools and distributed to the approximately 7100 individual growers. By August of 1941 every pound of raisins delivered into the two pools had been disposed of at an average price of \$60.51 per ton and the entire loan, with interest thereon, fully repaid.

The Individual Case of Mr. Brown.

Mr. Brown, the appellee, has been connected with the raisin industry as an employee and grower for a number of years. In 1939 for the first time he engaged in business as a packer and since then has been both a producer and packer of raisins.

As a producer of raisins in Zone No. 1 he voluntarily participated in the Seasonal Marketing Program for 1938-39 and applied for and received and accepted primary and secondary certificates for his raisins for such crop year. [R. 20, par. 16.] As a producer he had approximately 200 tons in 1940. [R. 76.] As a packer he claimed to have handled approximately 2,000 tons for the 1939-40 season. [R. 79.] Of the 40 packers in the State, he handled less than 1% of that season's crop and is obviously one of the smaller packers.

It is a common practice among the smaller packers who do not carry-over much, or any, inventory to start dealing in the spring regarding the coming fall crop of raisins. They take orders from jobbers, brokers and wholesalers and then in turn contract with growers for delivery to cover the same. For the purpose of filling these orders some packers will buy short or long according to their opinion as to the trend the market will take. [R. 129.]

In this manner appellee in May of 1940 accepted orders for $762\frac{1}{2}$ tons of raisins for fall delivery at \$60.00 per ton, less some small discount. [R. 74; Plaintiff's Exhibits 1, 3, 4, 8 and 9.] $437\frac{1}{2}$ tons were to be of the 1940 crop [Plaintiff's Exhibits 1, 3 and 9] and 325 tons were to be either the 1939 or 1940 crops. [Plaintiff's Exhibits 4 and 8.] As appellee had 200 tons of his own it was necessary for him to acquire $562\frac{1}{2}$ tons more in order to fill these orders. [R. 76.] In addition to his own 1940 crop of 200 tons appellee had on hand when he accepted these orders in May, 1940, about 100 tons of 1939 raisins. [R. 97.] This reduced the amount that he was required to obtain to $462\frac{1}{2}$ tons.

At that time, 1940 crop raisins were available in the field and could be contracted for from the growers for fall delivery at \$45.00 a/ton. [R. 97.] Appellee made no effort at that time to purchase or contract for any raisins to fill these orders. [R. 98.] There had been no seasonal marketing program in effect for 1939-40 and one of the reasons why appellee made no effort to buy any raisins or contract for any at that time to fill his 1940-41 season. [R. 98, lines 12-13:] He knew that without a program the growers, pressed for money, would be forced to dump their raisins on the market in the fall at a low price. [R. 93-4.]

The 1940 raisin crop was exceptionally early. [R. 86, lines 39-40.] Appellee states that prior to September 7th, the date when the 1940-41 Seasonal Marketing Program went into effect, there was a rush by growers that were unfavorable to the plan to sell their raisins and he thinks that about 20,000 tons were sold prior to that date. [R. 88, lines 20-23; 90, lines 12-15.] But of these 20,000

tons appellee only saw fit to procure from 75 to 80 tons to cover his orders. [R. 91.]

Obviously, there was available probably a hundred times the amount of raisins required by appellee to cover his orders. In fact, appellee admits that he actually did purchase about 700 tons of 1940 crop raisins, nearly double the amount required for his orders, but strangely enough he apparently did not use these to fill any of such orders and leaves us with no explanation why. [R. 92-3.]

Unquestionably appellee sold 1940 crop raisins short in the spring of that year. Putting the 1940-41 Seasonal Marketing Program in effect kept the growers from dumping their raisins on the market at cut-throat prices and appellee was forced to pay the growers a higher price than he had gambled on.

After the program was announced on August 30th, the price to the grower prior to September 7th, when it became effective, went from \$45.00 to \$47.00 and \$48.00 per ton. Appellee, however, refused to pay this and still offered only \$45.00 a ton. Even at that period he still apparently had some hope that the program would not be placed in effect and he would still be able to buy his raisins at a cut price. [R. 89-90.] After the program went into effect this price increased to \$55.00 per ton. Of course, after the program became effective on September 7th growers were only permitted to sell as "free tonnage" the 30% of their crop but this amounted to nearly 50,000 tons available to fill appellee's requirement of 462½ tons. One of the real difficulties seems to be that Mr. Brown was a recalcitrant and refused to buy raisins unless the grower would sell his full 100% crop and thus become a party to violating the program with appellee. [R. 96, lines 22-32.]

SPECIFICATION OF ERROR TO BE URGED.

1. The District Court erred in finding and holding that the 1940-41 seasonal marketing program for raisins constitutes and is a direct, substantial and illegal interference with interstate and foreign commerce.

2. The District Court erred in finding and holding that such program directly burdens and effectively prevents the free flow of interstate commerce.

3. The District Court erred in finding and holding that such program is simply a means of controlling the supply of raisins into interstate trade channels and that its purpose and necessary effect is to place a controlled embargo on the State's raisin production.

4. The District Court erred in finding and holding that any regulation of the amount of raisins which may be produced, harvested or prepared for market in accordance with the demand and in the amounts and at the times that the available market will absorb the same is an actual burden upon and a direct interference with interstate commerce, and not an aid and benefit thereto.

5. The District Court erred in finding and holding that such program is not a regulation of proper preparation of the raisins prior to their being offered to the consumer and is not based upon protection to the industry through exclusion from the market of both unfit and uneconomic raisins.

6. The District Court erred in finding and holding that the cleaning, stemming, fumigating, seeding, etc., is not

part of the production of raisins essential to their use by the consumers.

7. The District Court erred in finding that the plaintiff was not guilty of laches and is not estopped to question the validity of such program.

8. The District Court erred in failing to specify whether the matters found in paragraph I of the Findings were or occurred in connection with interstate or intrastate transactions, and in failing to expressly find that all such matters were solely and wholly intrastate.

9. The District Court erred in overruling defendants' objections to the finding in paragraph VI of the Findings "that 90% to 95% of such raisins produced in said zone are consumed outside the State of California."

10. The District Court erred in finding in paragraph VIII of the Findings that "where the moisture retained in the dried grapes automatically equalizes toward the right proportions, completing the curing of grapes into raisins. Such process is entirely accomplished on the premises where the grapes are grown and when properly done the grapes have been entirely dried and cured and are a wholesome food and sound article of commerce."

11. The District Court erred in finding in paragraph X of the Findings that "in enforcing said program (defendants) have directly and substantially interfered with and obstructed plaintiff's said business and have directly and substantially burdened interstate and foreign commerce."

SUMMARY OF ARGUMENT.

The 1940-41 Seasonal Market Program for raisins deals only with the raw product before it is processed or prepared for the consuming public.

It applies wholly to a local transaction and does not directly affect the movement of the finished product in interstate commerce.

The fact that 90% to 95% of the finished product utilized for human consumption (probably 75% of the entire raw crop) ultimately moves in interstate commerce does not remove it from local regulation prior to such movement.

The control exercised by the program is antecedent to the beginning of any movement in interstate commerce.

The difficulty sought to be reached requires local treatment. The seasonal surplus in the raw product and consequent distress market is purely local and does not affect the interstate movement or market for the finished product.

Proration or restricted preparation for market of a product intended for and which does move in interstate commerce is not prohibited by the commerce clause.

State proration or regulation of the movement of a commodity to market which is designed as an aid and to augment interstate commerce and does not in fact burden or obstruct such commerce is not invalid.

Findings contrary to the stipulation of facts and evidence were made under the necessity of supporting the majority conclusion.

Plaintiff by his voluntary participation in and acceptance of the benefits under the previous seasonal raisin program is guilty of laches and estoppel to question the validity of the present program.

ARGUMENT.

Article I, Section 8 of the Federal Constitution in clause 3 thereof provides that:

"The Congress shall have power * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes; * * *"

The question is here squarely presented whether a state may regulate any of its agricultural crops, the bulk of which in some form ultimately enter interstate commerce, where such regulation seeks in any form to regulate the supply to meet the market demands.

Both the national and state governments have long sought to insure the farmer an adequate price for his crops, at least the cost of production.

May this be achieved by the state without running counter to the Federal Commerce clause?

It is the position of appellants that the state may accomplish this just as long as such regulation attaches prior to any movement in interstate commerce and does not *actually* burden nor obstruct such commerce.

We believe that the state regulation may directly affect the interstate movement so long as such effect is beneficial and not an obstruction nor burden.

However we are not faced with that problem in the present instance. The regulation here controls the movement of a raw product in *intrastate* commerce only. There is not the slightest showing that this has any effect upon the subsequent interstate movement of the finished commodity.

Agriculture has long been the object of special legislative treatment. For the past forty years, said Mr. Justice Frankfurter⁹

“an impressive legislative movement bears witness to general acceptance of the view that the differences between agriculture and industry call for differentiation in the formulation of public policy. * * *

“At the core of all these enactments lies a conception of price and production policy for agriculture very different from that which underlies the demands made upon industry and commerce by anti-trust laws. These various measures are manifestations of the fact that in our national economy agriculture expresses functions and forces different from the other elements in the total economic process. Certainly these are differences which may be acted upon by the law-makers.”

During the first World War agricultural producers in California, as in other parts of the country, were encouraged to increase their productive efforts to meet the increased war time demands. This was done and the momentum of that productive effort created a problem for which the public is still striving to find a satisfactory solution.

When the war ended, this war time demand vanished in less than one season. From that day to the present, when we are again faced with vastly increasing war time demands, the major crops of California have been compelled to go to market under surplus conditions and as

⁹*Tigner v. Texas*, 310 U. S. 141, 146, 60 S. Ct. 879, 881, 84 L. ed. 1124.

a consequence have been selling in a buyer's market. These surpluses may be either seasonal or annual in character, or both.

The ruinous effect of surpluses on price levels is well known. Experience has shown that a surplus of 10% will depress prices at least 25% and an excess of 20% will force prices down at least 50%. The reason for this unusual effect is that agricultural crops in the hands of the producers are perishable or semi-perishable and must be disposed of. Maturing in accordance with nature's plan the pressure on the producer to sell a commodity which will not keep is overpowering. Moreover the farmer is under a constant pressure to dispose immediately of his existing crop in order to finance himself for the coming season. It is the accepted fact that this competition between producers each attempting to dispose of all of his crop at approximately the same time on a surfeited market has resulted in chaotic price conditions and has deprived the farmer of a reasonable value for his products.

This is analogous in a greatly aggravated form to the situation prevailing in the bituminous coal industry and so graphically described by the former Mr. Chief Justice Hughes in *Appalachian Coals v. United States*, 238 U. S. 344, 362, 53 S. Ct. 471, 475, 77 L. ed. 825, as follows:

"This unfavorable condition has been aggravated by particular practices. One of these relates to what is called 'distress coal.' The greater part of the demand is for particular sizes of coal such as nut and slack, stove coal, egg coal, and lump coal. Any one size cannot be prepared without making several sizes. According to the finding of the court below, one of the chief problems of the industry is thus involved in the practice of producing different sizes of coal.

even though orders are on hand for only one size, and the necessity of marketing all sizes. Usually there are no storage facilities at the mines and the different sizes produced are placed in cars on the producer's tracks, which may become so congested that either production must be stopped or the cars must be moved regardless of demand. This leads to the practice of shipping unsold coal to billing points or on consignment to the producer or his agent in the consuming territory. If the coal is not sold by the time it reaches its destination, and is not unloaded promptly, it becomes subject to demurrage charges which may exceed the amount obtainable for the coal unless it is sold quickly. The court found that this type of 'distress coal' presses on the market at all times, includes all sizes and grades, and the total amount from all causes is of substantial quantity.

* * *

"In addition to these factors, the District Court found that organized buying agencies, and large consumers purchasing substantial tonnages, 'constitute unfavorable forces.' 'The highly organized and concentrated buying power which they control and the great abundance of coal available have contributed to make the market for coal a buyers' market for many years past.' * * *

"And in a graphic summary of the economic situation, the court found that 'numerous producing companies have gone into bankruptcy or into the hands of receivers, many mines have been shut down, the number of days of operation per week have been greatly curtailed, wages to labor have been substantially lessened, and the states in which coal producing companies are located have found it increasingly difficult to collect taxes.' "

The nature of California's agricultural products and the necessity of marketing the bulk of them at a distance from the places where they are grown have developed practices which are quite similar to those described in the foregoing excerpt. The existing surpluses and the nature of the product force shipment while a large proportion of previous shipments remain unsold. Often upon their arrival at destination these too must be held on tracks under penalty of demurrage charges and deterioration of the contents. The mere knowledge that these accumulated surpluses exist beyond question makes a buyers' market and depresses prices to ruinous levels. The first legislative recognition of this situation occurred in 1923 when the cooperative marketing law was revised and a policy of promoting orderly marketing of agricultural crops was initiated in California. As shown by Section 653aa of the Civil Code the legislature then recognized the advantage to the State of the elimination of gluts and famines in agricultural markets and in the achievement of more orderliness in agricultural marketing.

This measure was found inadequate and agriculture in this State did not share in the prosperity from 1926 to 1929. The reason was the inability of cooperative marketing agents to obtain control of the whole of the crops in which they were concerned, principally because the burdens of orderly marketing endeavors were not shared by all, although the benefits were.

Various other measures were enacted during the following years up until 1933. These measures helped but the

great need was for orderly marketing applied to the entire volume of the crop. This was evidenced by the efforts year after year in important crops to formulate controlled marketing programs which had for their purpose the pro-rating of the market and as an accomplishment the spreading of the surplus burden over all producers on a proportional basis.

Valiant voluntary efforts were made in the great major crops in California. A great degree of help and success was attained in the citrus industry by the California Fruit Growers Exchange, in the walnut industry by the Walnut Growers Exchange, and in the raisin industry by the California Raisin Growers Association, but these voluntary efforts all fell short of the desired result, especially as the burden of greater surpluses increased, because there was always a sufficient minority on the outside who refused to cooperate and share in the burden and who took advantage of the situation to dispose of their entire crop while the great majority strove to protect the industry. Naturally this resulted in a continual turmoil and unrest among all of the producers.¹⁰

¹⁰Bulletin 565 of the University of California College of Agriculture entitled "Economic and Legal Aspects of Compulsory Pro-ration in Agricultural Marketing" after reviewing numerous of these voluntary commodity programs stated at page 24:

"Each of the foregoing programs encountered the difficulty of obtaining and maintain participation by a large proportion of the growers. Numerous growers who have participated in such program recognized the economic gains to the industry, yet refused to participate again unless all growers participate. This situation has led many to believe that it is desirable to make participation compulsory for all growers if two-thirds or more of the growers are willing to conduct a restriction program."

The spreading of this surplus burden as an essential prerequisite to stabilization was recognized by the United States Supreme Court in *Nebbia v. New York*, 291 U. S. 502, 54 S. Ct. 505, 78 L. ed. 563, in the following language:

"A satisfactory stabilization price for fluid milk requires that the burden of surplus milk be shared equally by all producers and distributors in the milk shed. So long as the surplus burden is unequally distributed the pressure to market surplus milk in fluid form will be a serious disturbing factor."

This agricultural problem was not confined to the State of California. It was nationwide. Congress, as well as various State legislatures, were grappling with it. In 1933 the Federal Agricultural Adjustment Act was born (48 Stats. 1931, 199). In the same year the California Legislature enacted the original Agricultural Prorate Act.

In 1935 the same State Legislature made numerous amendments to the Agricultural Prorate Act and at the same time enacted two other agricultural statutes of similar import characterized by the Supreme Court of that State as follows (*Brock v. Superior Court*, 9 Cal. (2d) 291, 293):

"Three statutes were enacted by our legislature in 1935 for the purpose of regulating agricultural production and marketing. The Agricultural Prorate Act (Stats. 1935, Ch. 471, page 1526; Deering's General Laws, 1935 Supp. Act 143a, page 373) regulates production of agricultural products within the State of California. The Agricultural Marketing Agreement Act (Stats. 1935, Ch. 677, page 1856;

Deering's General Laws, 1935 Supp. Act 145, page 471) regulates *marketing* or shipping of agricultural products within the State where there is *no corresponding Federal regulation*. The Agricultural Adjustment Act, now before us, (Stats. 1935, Chs. 307, 416, pages 1032, 1468; Deering's General Laws, 1935 Supp. Act 146, page 480) regulates *marketing* of agricultural products within the State *where there is Federal regulation* of interstate shipment of the products, and the purpose of the Act is to provide a regulation of *intrastate* commerce which will be corresponding regulation of *interstate* commerce in the same commodities."

The Supreme Court of California in 1936¹¹ in an extended opinion held that neither the Agricultural Prorate Act nor a program thereunder pertaining to lemons was violative of the federal commerce clause. In so ruling, the court recognized that all of the lemon production in the United States is located in California, that approximately 99% of the California lemons shipped in fresh fruit channels moved interstate and that the same were shipped directly out of the state by the grower or his co-operative agency. Later, in 1938,¹² the same court reaffirmed its stand.

The seasonal program for raisins meets all the essential tests applied in measuring the extent to which local regulation may go as against the limitations imposed by the commerce clause.

¹¹*Agricultural Prorate Comm. v. Superior Court*, 5 Cal. (2d) 550, 559-68.

¹²*Whittier Mutual O. & L. Ass'n v. Agricultural Prorate Comm.*, 11 Cal. (2d) 470, 473.

**The Control Exercised Is Antecedent to the Beginning
of Any Movement in Interstate Commerce.**

The restrictions of the 1940-41 Seasonal Marketing Program operate wholly and solely upon the movement of raisins from the grower to the packer. Such movement is purely intrastate. It is wholly negotiated, carried out and consummated within the State of California. When they are thus delivered to the packer they are commercially a "raw" product. While the great bulk of such raisins are ultimately destined to move in interstate commerce the packer holds them in that "raw" condition for varying periods up to two years before he proceeds to process or prepare them for the trade and ship them out of the State. This processing or preparation of the "raw" product for the market is carried on by the packer entirely within the State of California and is a "local transaction".

The general rule is well established that until an article actually moves in interstate or foreign commerce it remains within the local or state jurisdiction and is subject to such local or state regulation. This general rule is not altered by reason of the fact that the article involved may be specifically intended for such interstate or foreign commerce and may have been actually manufactured or produced for that specific purpose. (*Coe v. Errol*, 116 U. S. 517, 6 S. Ct. 475, 29 L. ed. 715; *Heisler v. Thomas Colliery Co.*, 260 U. S. 245, 43 S. Ct. 83, 67 L. ed. 237.)

The tenacity with which this doctrine has been adhered to is impressively shown in the instance of electricity generated in Idaho for transmission into Utah. The right of Idaho to tax the generation of the electricity was upheld even though the simultaneous occurrence of the generation

and the transmission made it practically one continuous process. (*Utah Power & Light Co. v. Pfof*, 286 U. S. 165, 52 S. Ct. 548, 76 L. ed. 1038.)

The ginning and compressing of cotton to prepare it for market and for shipment in interstate commerce is certainly analogous to the cleaning, stemming, fumigating, seeding and packaging of raisins for the same purpose. The alleged position of appellee here as a buyer of raisins for delivery in interstate commerce is no stronger than the position of the buyer of such cotton for delivery in interstate commerce. Yet the ginning, compressing and sale of such cotton within the state was held to be a local transaction and the jurisdiction of the state to tax the same as a local activity has been sustained. (*Chassaniol v. City of Greenwood*, 291 U. S. 584, 54 S. Ct. 541, 78 L. ed. 1004; *Federal Compress & Warehouse Co. v. McLean*, 291 U. S. 17, 54 S. Ct. 267, 78 L. ed. 622.)

Any exemption in the case of taxing statutes from the restrictions of the interstate commerce clause is dissipated by the series of cases establishing the absolute immunity of interstate commerce from state taxation.¹³

¹³The state may not tax goods moving in interstate commerce. (*Kelly v. Rhoads*, 188 U. S. 1, 23 S. Ct. 259, 47 L. ed. 359.) It cannot tax interstate transportation. (*Case of the State Freight Tar*, 15 Wall. 232, 21 L. ed. 146), nor may it tax the gross receipts from such transportation. (*Galveston, Harrisburg & San Antonio R. R. Co. v. Texas*, 210 U. S. 217, 28 S. Ct. 638, 52 L. ed. 1031.) It cannot tax the solicitation of a contract for such transportation. (*McCall v. California*, 166 U. S. 104, 10 S. Ct. 881, 34 L. ed. 391.) The state cannot tax the business of carrying on interstate commerce under the guise of a general tax (*Leloup v. Port of Mobile*, 127 U. S. 640, 8 S. Ct. 1380, 32 L. ed. 311), nor may it tax the solicitation of a sale of goods to be brought from another state. (*Real Silk Hosiery Mills v. Portland*, 268 U. S. 325, 45 S. Ct. 525, 69 L. ed. 982.)

Effect of National Labor Relations Board Cases.

The decisions under the National Labor Relations Act¹⁴ undoubtedly established the authority of Congress under certain circumstances to regulate purely local conditions such as preparation for market, production, etc. This constitutes an exception to, but does not change, the general rule. The Congressional authority is not exercised because such local conditions are a part of interstate commerce, but because it is deemed necessary for Congress to step into such purely local field in order to protect interstate commerce.

The differentiation in the field of consideration and in the approach in determining whether a purely local transaction is subject to state regulation and in determining the power of Congress to regulate such purely local transactions for the purpose of protecting interstate commerce is most clearly and succinctly set forth in the minority opinion of the lower court. [R. 45-7.]

This court in one of the first of such cases to come before it¹⁵ rejected the theory advanced by the Government that the raw product used in making up an article ultimately moving in interstate commerce became a part of the "stream" or "flow" of such commerce from its incipency, and instead proceeded to make the plenary power

¹⁴(From *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615, 81 L. ed. 893, to *U. S. v. Darby*, 312 U. S. 100, 61 S. Ct. 451, 85 L. ed.)

¹⁵*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, *supra*.

of Congress to take control of such otherwise purely local conditions when necessary to protect interstate commerce an exception to said general rule. This is further evidenced by the fact that this court has in recent cases, subsequent to such National Labor Relations Board cases,¹⁶ cited and relied upon *Coe v. Errol*, *Heisler v. Thomas Colliery Co.*, *Chassaniol v. City of Greenwood*, and *Federal Compress & Warehouse Co. v. McLean*, *supra*.

The conclusion is well stated in the minority opinion in the lower court heretofore referred to that

"While the rigid distinction between production and commerce no longer holds in so far as the exercise of congressional restraint and regulation is concerned, * * * it is still maintained when we come to assay the exercise of state powers."

That these Labor Relations Board cases are not intended to impair the traditional sovereignty of the several states in exercising their historic powers over local matters was clearly indicated by this court very recently in upholding a State Labor Relations Act where it was not incompatible with nor hostile to the policy expressed in the Federal statute.¹⁷

¹⁶*McGoldrick v. Berwind-White Coal Mining Co.*, 309 U. S. 33, 60 S. Ct. 388, 84 L. ed. 565.

¹⁷*Allen-Bradley Local No. 1111 etc. v. Wisconsin Employment Relation Board*, 314 U. S., 62 S. Ct. 820, 86 L. ed.

North Dakota Grain Cases.

The majority opinion of the lower court [R. 38-9] stresses the so-called North Dakota Grain Cases. In fact, the minority opinion refers to them as the bottom upon which the majority rests its finding of unconstitutionality of the raisin program. [R. 47.]

In the *Lemke* case¹⁸ the North Dakota Act provided a comprehensive scheme for regulating the buying of grain and provided that purchases could only be made by those who held licenses from the State, paid State charges for the same, and acted under a system of grading, inspecting and weighing fully defined in the statute. Furthermore, the grain could only be purchased subject to the power of the State Grain Inspector to determine the margin of profit which the buyer should realize upon his purchase. The "margin of profit" was defined as "the difference between the price paid at the North Dakota Elevator and the market price, with an allowance for freight, at the Minnesota point to which the grain is shipped and sold".

It is not surprising that the majority of the court considered this to be an attempt to directly regulate interstate commerce when the Act specifically controlled the buying and the margin of profit and the freight rate from North Dakota to Minnesota. Even so, this was a borderline decision, and Mr. Justice Brandeis rendered a dis-

¹⁸*Lemke v. Farmers Grain Co. of Embden*, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458.

senting opinion with the concurrence of Mr. Justices Holmes and Clark.

In *Grandin Farmers Co-Op. Elevator Co. v. Langer*, 5 Fed. Supp. 425, affirmed without opinion 292 U. S. 605, 54 S. Ct. 772, 78 L. Ed. 1467, the State of North Dakota attempted to go even further and authorized the Governor to declare and maintain an embargo on the shipment out of the State of any agricultural product produced within the State when the market price thereof reached a point where the returns are confiscatory. Here was an attempt to directly regulate nothing but interstate commerce and, in addition, to discriminate against such commerce, as no embargo was laid upon movement or sales within the State. There you have a direct regulation of interstate commerce and discrimination against the same as contrasted in the instant case with a regulation affecting wholly an intrastate condition and having the same application upon the commodity regardless of whether it moves intrastate or interstate.

The minority opinion points out [R. 47] that Mr. Justice McKenna, who wrote the opinion in the *Lempke* case, later wrote the opinion in *Heisler v. Thomas Colliery Co.*, *infra*.

The Raisin Program Does Not Burden Interstate Commerce.

It is obvious that the program in question does not attempt to directly regulate any interstate commerce movement and has no direct specific reference to such commerce. The determination then of the validity of the program rests upon whether it directly or indirectly affects interstate commerce or is actually a burden thereon or an obstruction thereto. Even if it directly or indirectly affected commerce its validity or invalidity must ultimately be determined by the conclusion, we believe, as to whether such direct or indirect effect constitutes an actual burden or an obstruction to such commerce.

The majority opinion in the lower court said [R. 40]:

"It may here be stated that the inhibition of the program is not based upon crop limitations or upon the health of the consumer or protection of the industry to exclusion from the market of unfit fruit. Such cases as *Sligh v. Kirkwood*, 237 U. S. 52, 32 S. Ct. 501, 59 L. Ed. 835, are not in point."

The implications drawn from this statement are difficult to reconcile with the legal conclusions reached by the author thereof. Can it be said that a limitation upon the crop itself by restricting the amount of grapes which may be utilized for raisins or the amount of acres which may be planted thereto does not directly or indirectly affect commerce therein nor burden nor obstruct the same, but that a limitation upon the amount of raisins which may be harvested or prepared for market or delivered to a packer for subsequent preparation for market, or regulating the time of such movement would do so?

It is true that the right of the State has long been recognized to exclude from interstate commerce by means of quarantine and standardization laws diseased, unfit and substandard fruits and other commodities, but this has not been done because of any specific exemption from the interstate commerce clause of such diseased or unfit commodity. It is done rather because of decisions passing upon the specific cases and reaching the conclusion that because of such diseased or unfit condition the prohibition and exclusion of the commodity in question did not therefore burden or obstruct interstate commerce.

This is recognized in the Minnesota Rate Cases upon which the majority of the lower court are prone to rely in this instance, where it was said:¹⁹

“Quarantine regulations are essential measures of protection which the States are free to adopt when they do not come into conflict with federal action. In view of the need of conforming such measures to local conditions, Congress from the beginning has been content to leave the matter for the most part, notwithstanding its vast importance, to the States and has repeatedly acquiesced in the enforcement of State laws. * * * Such laws undoubtedly operate upon interstate and foreign commerce. They could not be effective otherwise. They cannot, of course, be made the cover for discriminations and arbitrary enactments having no reasonable relation to health

¹⁹*Simpson v. Shepard*, 230 U. S. 352, 406, 33 S. Ct. 729, 57 L. Ed. 1511.

* * *; but the power of the State to take steps to prevent the introduction or spread of disease, although interstate and foreign commerce are involved (subject to the paramount authority of Congress if it decides to assume control), is beyond question."

Here, in the present instance, we have a local condition, a seasonal surplus of "raw" raisins existing only in the State of California. No other state is called upon to deal with this problem. No other state is concerned with the "raw" raisin product nor even interested therein—at least not so long as there is the ample supply of finished raisins shown here to satisfy the legitimate demands of all the rest of the states.

There is no discrimination involved for the program operates equally upon the raisin whether it is ultimately consumed within or without the State of California.

The statement that the "inhibition of the program is not based upon * * * the health of the consumer or protection of the industry through exclusion from the market of unfit fruit" is belied by the terms of the program itself. The latter permits only "standard" raisins to be placed on the market and eliminates all "substandard" and "inferior" raisins except for by-products purposes.

The lower court stresses the fact that the program does not place a "limitation upon submitting ripe grapes to a proper process whereby the grapes become a marketable raisin" and concludes "that the prorate program as presented in this case does not attach to or impinge upon 'production'."

The only implication that can be drawn from this conclusion of the lower court is that with all other factors remaining the same and with the same motive and the same alleged intent to control and regulate the movement of raisins in interstate commerce if the program had controlled the amount of grapes that might have been dried for the purpose of becoming raisins then there would have been no unlawful interference with interstate commerce and the program would have been sustained.

Referring again to the Minnesota Rate Cases at page 402 the court there said:

"Further, it is competent for a state to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals and welfare of its people, although interstate commerce may incidently or indirectly be involved. * * * Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provisions for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible."

The court then proceeds with numerous illustrations of the exercise of such powers by the state, citing the propriety of local action with respect to pilotage, improvements of harbors, bays and streams, and bridges across navigable rivers, wharves and docks, etc.

In the instant case the program applies only and solely to internal commerce. The State Supreme Court has declared it to be a protective measure of a reasonable character in the interest and essential to the welfare of its people. The dumping of the entire raw product by the growers into the hands of the packers at one time and the consequent threat and injury to the growers because of this seasonal glut in the *local* market is a matter peculiarly of local concern and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs.

Presumably, the finished raisin product moves into the interstate and foreign commerce in accord with the demand therefor. Any Federal regulation of this interstate movement of the finished product would not remedy the condition of the grower nor in any wise reach the *local* situation sought to be alleviated. Nature's method of maturing the raw raisin product at one short period in the year cannot be changed. Federal regulation of the interstate movement of the finished product will not in one whit abate the necessity which the poorly financed growers are under to dump their entire crop on the market immediately upon its maturity.

It is difficult to dismiss the authority of *Sligh v. Kirkwood*, *supra*, as lightly as the majority of the lower court seemingly seek to do. Florida prohibited the sale or shipment (a direct regulation of commerce) of citrus fruits

"which are immature or otherwise unfit for consumption." The great bulk of Florida's citrus fruits are directly sold and shipped in interstate commerce.

This Florida statute constitutes a far greater onslaught upon the federal commerce clause than does the California raisin program. Both deal with a major crop of the respective states. But Florida has not the monopoly of citrus fruits that California has of raisins and her problem was not nearly so *local* as the raisin grower's. In both instances the great bulk of the crop leaves the state in interstate commerce. But Florida's citrus fruits move interstate directly and immediately while it is only the finished or processed raisin that moves interstate after it is several times removed from the growers' hands and as long as two years after. In both instances a state was endeavoring to protect one of its major crops. In Florida this involved a direct ban upon interstate shipment, in California the program controls only the raw product into the processors' hands within the state.

In the *Sligh* case this court said this did not unlawfully impinge upon the commerce clause. Surely if Florida could directly prevent the interstate movement of immature citrus fruits to protect the reputation of that industry, then California may control the purely *intrastate* movement of equally detrimental raisins in order to preserve the life of that industry.

The majority opinion states R. [41-2]:

• "While it is true that the program purports merely to prevent and regulate the sale of raisins to the packer under the universal custom of his cleaning, stemming and packaging them within the State, the

raisins on the producing premises and those stored by the program committee are at all times kept from market except through the operation of the program. It is impossible to avoid the conclusion that the purpose and necessary effect of the program is to place a controlled embargo on the State's raisin production, in order to effect and stabilize prices. It seems clear to us that the program is frankly and simply a means of controlling the supply of raisins into interstate trade channels to meet the market demands. As to this purpose it is not in our province to comment. We think the State has attempted to accomplish this result by a process which impinges upon a grant of power to the Federal Government."

With the above conclusion we are forced to differ. Putting the implication of the Court more bluntly, it amounts to a statement that the program complained of was and is an attempt to control the supply, starve the consumer market and force higher prices for the product at the expense of the consumer. We submit that a careful examination of the history of the industry does not support this position. Neither do the terms of this particular program nor its actual operation warrant any such conclusion. And there is not a single evidentiary fact in the record to support such an inference.

This program is, as its name indicates, a *seasonal* program. It does not seek to affect the price to the consumer nor the distribution movement to the wholesale or retail trade. And in fact it has not done so.

The entire *finished* raisin product, which is the *only* product moving *interstate*, is held wholly in the hands of dealers, who are abundantly able and amply equipped to

distribute the same in accord with both the intrastate and the interstate market demand.

• True, there has been for many years an annual carry-over in excess of the consumer demand. In years when this *annual* surplus is exceptionally large it further distresses the grower's problem with his *seasonal* surplus. But a solution of the grower's *seasonal* surplus problem does not in a fraction of a degree obstruct, burden or affect interstate commerce. An oversupply of raisins has been on hand at all times ready and waiting—eagerly—for any and all interstate demand.

• The 1940-41 Seasonal Marketing Program deal with a different situation. Every year in the raisin industry, regardless of the size of the crop, there occurs a "seasonal" or temporary surplus in the raw product. The picking of grapes for raisins begins normally around September 1, of each year. All of these raisin grapes are normally picked, dried, cured and ready for the packer by October 30. The entire production of the grower's annual raisin crop comes within two of the twelve calendar months.

With an average crop of around 200,000 tons produced by approximately 7500 growers, the average grower produces about 25 tons. These 200,000 tons constitute approximately half of the world supply of raisins for twelve months, and are distributed to the trade and to the consumer fairly uniformly over the entire year.

Without some such program, as the one under discussion, the trend of events was obvious. The small grower had his year's work in a crop which matured and was ready for market in September and October. He was not in a financial position to carry it. He had a "raw"

product and *his* market was not interstate, but was limited to some 40 local packers. Of these, from five to ten larger ones handled 85% of the entire raisin crop.

The result was inevitable. The small grower was forced to sell on a distress market to packers financially able to hold the product and dispose of it in accordance with trade requirements. At most the packer had only to purchase sufficient raisins in September and October to meet his current demands. In years when there was a large annual carry-over the packer could wait months before making any purchases. The grower was at the complete mercy of the packer and took whatever the latter saw fit to pay.

And when the packer drove bargain prices for the raw product he did not pass up the extra profit. The amount of raisins in interstate commerce was not thereby changed nor were the prices to the consumer affected.

The basic thing which this program does is to permit the "raw" raisin crop to be held under State supervision with the aid of the Federal government through Commodity Credit Corporation financing for the protection of the grower, instead of leaving the latter at the mercy of the packer.

There is nothing in the entire gamut of the *finished* raisin, from the packer to the jobber to the wholesaler to the retailer to the consumer that indicates a forced dumping by the seller upon a surfeited market. In every step of the way the movement of the supply of *finished* raisins is controlled and regulated to meet the demand throughout the year.

It is only in the case of the "raw" raisin product that the grower is forced by necessity to dump the entire year's supply on the market at one time.

We believe that the majority opinion both in its premise and in its conclusion completely overlooks the fact that the movement sought to be controlled is from the producer to the packer and the price sought to be stabilized is the price paid by the packer to the producer, neither of which relate to interstate commerce but are wholly intrastate transactions.

The "glut" and "famine" which this legislation and program sought to alleviate and prevent were the "glut" and "famine" of raisins in the hands of the producers and not that of raisins in the hands of the packers.

The statement of facts [R. 17, par. 11], states:

"That a large percentage of the raisins produced within the Zone is sold and delivered to packers within ninety days after the start of the delivery season which ranges from September 15th to September 30th. Generally speaking, the producer of raisins is forced to sell and deliver his raisins during this period as soon as the raisins have been cured in order to procure funds with which to finance his operations and his succeeding crop."

Here, as in most agricultural legislation, it is the producer whom the Government seeks to protect in order to insure an adequate and continuous supply of the essential food commodity in question.

Unlike the situation in certain other commodities, such as oranges, lemons, grapefruit, etc., the condition which the

proration program seeks to correct and protect in the present instance of raisins is one wholly intrastate and which has no appreciable relation to nor effect upon interstate commerce.

The raisin producer unlike the grower of oranges, lemons or grapefruit or walnuts, does not himself dispose of a commercially finished product into interstate commerce but delivers only a raw product to a packer or a processor within the State. It is from the California packer and not from any out of state concern that the program seeks to protect the grower.

However, if the program be considered as actually a means of controlling the supply of raisins into interstate trade channels to meet the market demands, then it differs not one whit from the object and purpose of the Order Regulating the Handling of Oranges and Grapefruit grown in the States of California and Arizona under the Federal Agricultural Adjustment Act.

Upon the authority of the Circuit Court of Appeals for the Ninth Circuit (*Edwardson v. United States*, 91 Fed. (2d) 767, 777) such purpose and object and the attainment thereof are in fact highly beneficial to interstate commerce. Such regulated flow to market is said to tend to "a more accurate anticipation by railroads of the probable transportation requirements" and "a more efficient conduct of railroad operations respecting the availability and flow of * * * cars", all of which in turn tends to "increased consumptive demand" thereby making in the long run for a greater movement of interstate commerce.

Likewise considering the premise of the lower court that the necessary effect of the program is to affect and stabilize

prices—we have the same authority that this is also beneficial to interstate commerce. At pages 779 and 780 of the *Edwards* case it is said:

“We take notice of the ‘constantly recurring burdens on interstate commerce’ during the successive economic depressions of the last hundred years, * * * due to the ability of consumers to purchase less than the average of the production of both the agricultural and manufacturing states. * * *

“We accept as a rational concept of fact * * * that, had the producers of agricultural products of the agrarian and fruit-growing states continued to receive a fair average price for the prosperous periods preceding these depressions, they would have purchased more of the products of the manufacturing states. * * * This would tend to make larger the volume of interstate commerce, thus eliminating the burdens of depressions on interstate carriers or diminishing their weight or making them less ‘constantly recurring’ in their ‘throttling’ of such commerce.

“We must also attribute to congressional motivation the rational concept of fact that, in the historic succession of economic depressions, interstate commerce plays a causative and devastating part in the overcrowding of markets preceding their stagnation. The prevention of the use of interstate commerce in such overcrowding may ameliorate the economic prostration of the whole nation, * * *”

It is a well known economic fact that the difference between 2¢ or 2½¢ or 3¢ or even 3½¢ a pound for the raw product raisins to the grower will have no appreciable effect upon the ultimate price for the finished product paid by the consumer.

The facts in this case show that at the time the program became effective, there was a stock of 70,000 tons of the raw raisin product in the hands of the packers and 30% of the new crop was made immediately available. The packers have at all times had on hand a stock of the raw raisin product amounting to not less than 30,000 to 40,000 tons more than the market required, and which they were unable to dispose of.

The lower court brushes this aside upon the ground that the 30% free tonnage might be reduced to 15% or entirely eliminated and says that the vice of the situation is that any marketable part of the crop is required to be submitted to any regulation. It is true that it is within the realm of possibility that the free tonnage might be reduced to 15% or entirely eliminated in the event that the stock on hand in the possession of the packers became so great as to be more than ample to supply all demand. However, as remarked by the court in *Slight v. Kirkwood*, *supra*, no such case is here presented and whether such a case as supposed would be within the statute is not for us to say.

To remove the implied fear that the state agency may place a complete embargo upon the raisins and thus force an exorbitant price from the consumer in interstate commerce, Section 10 of the Act, itself, provides that in order to place the program in effect it must be found from evidence and data developed at public hearings "that the institution and operation of a proration program will not result in unreasonable profits to producers. * * *

Furthermore as recently stated by this court:²⁰

"Constitutional questions are not to be dealt with abstractly. * * * They will not be anticipated but will be dealt with only as they are appropriately raised upon a record before us. * * * Nor will we assume in advance that the state will so construe its law as to bring it into conflict with the Federal Constitution or an act of Congress. * * * Hence we confine our discussion to the precise facts of this case and intimate no opinion as to the validity of other types of orders. * * *"

And continuing in the same case as to the same effect the court further remarked that:

"It is not sufficient, however, to show that the act *might* be so construed and applied as to dilute, impair or defeat those rights."

The precise facts of this case are that interstate commerce has not been interfered with in the slightest degree.

Viewing the situation in its worst possible light through the eyes of the majority opinion of the lower court, the program controls the movement of the raw raisins from the grower to the packer in order to procure a stabilized reasonable return to the grower to insure his economic existence for the benefit of the public welfare of this state.

This controls the movement of a commodity at its source which ultimately in its finished state moves almost entirely in interstate commerce and might possibly result in some control of the interstate commerce movement, although

²⁰*Allen-Bradley Local No. 1111 v. Wisconsin etc. Board, supra.*

the evidence in the instant case shows no effect whatsoever upon any such interstate movement.

The majority of the lower court, referring to the opinion of Mr. Justice McKenna in *Heisler v. Thomas Colliery Co.*, *supra*, state [R. 43]:

"But, on the other hand, if the State of California has the power to execute a control plan of its entire fruit crop and permit it to enter the market for consumption only as and when if administrators adjudge proper, then every state can so control all industries and crops within its boundaries by the same token. This presents a condition certainly no less repugnant to our dual system of State and Federal Government than that illustrated by Mr. Justice McKenna, a condition in the situation confronting us which the constitutional fathers sought to guard against by writing the commerce clause into the Constitution itself."

Notwithstanding such statement the power of the State to control the entry of its products into market has been repeatedly sustained.

Florida made it "unlawful for anyone to sell, offer for sale, ship or deliver for shipment any citrus fruits which are immature or otherwise unfit for consumption, * * *". And the bulk of Florida's citrus fruits are shipped out of the State. Notwithstanding its direct effect upon interstate commerce this was sustained as a protection of the State's reputation in foreign markets and the consequent beneficial effect upon a great home industry.

Indiana proceeded "to regulate the sale of concentrated commercial feeding stuff in the State," although numerous such sales were made from points without the State.²¹

²¹*Savage v. Jones*, 225 U. S. 501, 32 S. Ct. 715, 56 L. ed. 1182.

The state of Oklahoma in a statute which served as a model for the California Agricultural Prorate Act curtailed the withdrawal of its oil and gas in excess of reasonable market demands. The great bulk of the Oklahoma oil found its way into interstate commerce just as in the case of California raisins. Likewise the motive in both instances was the same—to prorate and control the movement of the commodity from its source in order to protect and stabilize the prices to the producer. Both the minority opinion of the lower court and the Supreme Court of the State of California²² found the *Champlain* case very determinative of the present question. The majority opinion seeks to differentiate it as a regulation of *production* and a protection of the state's natural resources. However, nowhere has the majority opinion been able to differentiate between *production* and between *preparation for market or delivery to the processor* within the state for such *preparation* as local transactions antecedent to any movement in interstate commerce, nor is there any authority cited or to be found to the effect that natural resources are exempt from the restriction of the interstate commerce clause.

The majority of the lower court cite the case of *West v. Kansas Natural Gas Co.*, 221 U. S. 229, 31 S. Ct. 564, 55 L. ed. 716, apparently in support of the theory that the same rule relative to interstate commerce does not apply to natural resources as to other commodities. The Oklahoma statute absolutely prevented interstate commerce in natural gas but did permit such interstate commerce. It was defended as a conservation of the state's natural resources for the benefit of the inhabitants of the state.

²² *Agricultural Prorate Comm. v. Superior Court*, 5 Cal. (2d) 550.

As the court remarked (p. 250), "It was manifestly enacted in the confident belief that the state had the power to confine commerce and natural gas between points within the state, * * *." The statute was held unconstitutional upon the grounds that it was a direct and express discrimination against interstate commerce. The court said:

"The statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate commerce, and this is the purpose of its conservation." (P. 255.)

The right of a state to prorate or curtail its gas²³ and its oil have been subsequently upheld and the *Champlain* case approved.²⁴ In this latter case, although admittedly a large proportion of the Texas oil goes into interstate commerce the proration thereof was not even attacked upon that ground.

Currin v. Wallace, 306 U. S. 1, 59 S. Ct. 379, 83 L. ed. 441, and *Townsend v. Yeomans*, *supra*, strikingly illustrate the interrelationship of Federal and State control of commodities, the bulk of which ultimately pass into interstate commerce. A Georgia statute fixed commission, auction fees and weighing and handling fees for tobacco. 100% of the tobacco moves in interstate and foreign commerce. It is all sold at auction and purchasers "for the most part are manufacturers of cigarettes who immediately have the tobacco transferred to their plants outside the state." This is in sharp contrast with the raisin industry

²³*Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55, 57 S. Ct. 364, 81 L. ed. 510.

²⁴*Railroad Commission of Texas v. Rowan and Nichols Oil Co.*, U. S. _____, 60 S. Ct. 1021, 84 L. ed. 983.

where the raisins are sold to local packers who hold them for a period up to two years, process or prepare them for market, and then resell to other buyers for shipment out of the state. The court cites the Minnesota Rate Cases.

The majority of the lower court quote the following from the opinion in the *Townsend* case as indicating how widely different the regulation there is from the one here [R. 41]:

"* * * We find no ground for concluding that the state requirements lay any *actual* burden upon interstate or foreign commerce. The Georgia Act does not attempt to fix the prices at the auction sale or to regulate the activities of the purchasers. The fixing of reasonable maximum charges for the services of the warehousemen in aid of the tobacco growers does not militate against any interest of those who buy." (Italics supplied by the lower court.)

"Here, the Georgia Act lays no constraint on purchases in interstate commerce, does not attempt to fix the prices or conditions of purchases, or the profit of the purchasers. It simply seeks to protect tobacco growers from unreasonable charges of the warehousemen for their services to the growers."

"The principal purchasers of * * * tobacco grown in Georgia * * * are limited to a few large manufacturers of cigarettes."

In the present case the purchasers of the raw raisins are limited to 40 packers.

"The tobacco is ready for the market in the latter part of July or early in August. * * * The selling season is from three to five weeks in length. The short tobacco season causes growers to rush tobacco to the market and does not give them a fair oppor-

tunity 'to properly grade, store, bundle, and orderly market their tobacco.' "

In this instance the raw raisins are matured and ready for market to the packer generally between September 15th and 30th. The selling season is from two to three months. Growers rush their raw raisins to the market because of their urgent need for ready money and they are thus deprived of the opportunity to properly grade, store, and orderly market their raw raisins.

The lower court does not point out where any *actual* burden is laid upon interstate or foreign commerce by the program under consideration and the evidence precludes the possibility that any such burden has been actually laid upon such commerce.

Speaking of the contention that local control must fall as repugnant to the exclusive power of Congress in the interstate commerce field, the court in the *Townsend* case said (U. S. Reports p. 455, S. Ct. p. 849):

"The contention ignores the principle that this ground of invalidity is to be found only with respect to such matters as demand a general system or uniformity of regulation; that in other matters, admitting of diversity of treatment according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act. (Citing cases.)

"In the instant case, the Georgia statute deals with a local need, exercising the state's protective power with respect to its own industry."

Likewise, in the present case the raisin program deals with a local need exercising the state's protective power

with respect to its own industry. No other state has a surplus of raisins to deal with. No other state has sufficient raisins to require any general system of regulation of surplus or otherwise. The problem relates peculiarly and only to California. It is the need of the growers of raisins in that state to be protected from the necessity of dumping their raw product into the hands of processors within that state at one time and without the benefit of orderly marketing.

Paraphrasing the closing paragraph of the *Townsend* opinion partially quoted by the lower court we may well say:

"Here the raisin proration program lays no restraint upon purchases in interstate commerce, does not attempt to fix the prices or conditions of purchases or the profit of the purchasers in such commerce. It simply seeks to protect raisin producers from ruinous cut-throat conditions caused by excess seasonal surpluses. Whatever relation this regulation of seasonal surplus raisins by means of the proration program has to interstate and foreign commerce, 'the effect is merely incidental and imposes no direct burden upon that commerce. The state is entitled to afford its industry this measure of protection until its requirement is superseded by valid Federal regulation.' "

The majority of the lower court seemingly question the real motive behind the raisin proration program. They state, [R. 39-40]:

"In the light of the broad grant of power given Congress over interstate commerce and the principles laid down by the Supreme Court as herein outlined, the necessary effect upon interstate commerce of the

raisin prorate program must be scrutinized, and this with the principle in mind that one challenging the validity of a state enactment is not necessarily bound by the legislative declarations of purpose. It is open to him to show that the practical operation of the statute or of any program devised under the authority of such statute directly burdens or effectively prevents the free flow of interstate commerce. *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1, 49 S. Ct. 1, 73 L. ed. 147."

In that case the court in passing upon the "Shrimp Act" of Louisiana determined, as it subsequently stated in *Bayside Fish Flour Co. v. Gentry*, 297 U. S. 422, 427, 56 S. Ct. 513, 515, 80 L. ed. 772, that the ostensible purpose of such act was feigned and that the real purpose was to compel the removal of the shrimp packing and cannery industries from Mississippi to the state of Louisiana. Certainly there is nothing in the factual situation and the principles involved in that case that are even remotely comparable to the provisions and operation of the raisin proration program.

The federal government has long encouraged and urged the growers to encompass precisely the same control and with the same objectives as in the case of the program before us by means of co-operative marketing associations. And some of these, notably in citrus fruits, walnuts and even raisins have accomplished some very beneficial results and have at times controlled from 75% to 90% of the crop.

This co-operative control has had exactly the same purpose and the same effect upon interstate commerce, only in a lesser degree to the extent that the control was exercised upon 75% or 90% instead of 100% of the crop affected.

But such co-operative marketing control was never prohibited as an interference with interstate commerce.

The Supreme Court of the state has sustained the constitutionality of the statute and upheld the validity of a program encroaching much more closely upon interstate commerce than does the raisin program.²⁵

The legislative branch of the federal government has placed its stamp of approval upon controlled marketing and proration as an aid to interstate commerce.²⁶

Finally the executive branch of the federal government has given this particular program its approval, and through Commodity Credit Corporation has granted a loan upon the express condition that such program be placed in effect and maintained in operation.

It has remained for the majority of the lower court in this particular case to alone question this program. Their sole ground seems to be a fear that the program may be used to force consumers of raisins outside the State of California to pay an exorbitant price for the benefit of California growers, or to place a complete embargo upon their shipment out of the state.

There is not a thing in the record to support even an intimation that the program would be put to such use. The history of the raisin industry shows a continuous and strenuous effort to develop and expand the interstate market, not to restrict it. The statute itself, provides against such misuse. We are not required to deal with such a fancied situation in the present case. And finally, if and

²⁵ *Agricultural Prorate Comm. v. Superior Court*, *supra*.

²⁶ *Agricultural Adjustment Act*, 7 U. S. C. A. 608 et seq.

when, if ever, such situation arises Congress may take appropriate steps, and the courts may then forthwith enjoin such misuse of the program.

From 90 to 95 per cent of all the raisins used for human consumption are shipped out of the State of California. Not this percentage of all the raisins produced. However, the fact that the bulk or even all of a commodity ultimately moves into interstate commerce and that such commodity was produced or manufactured with that knowledge and intent does not render invalid state regulation attaching at a point prior to the commencement of its actual movement in such interstate commerce.²⁷

Plaintiff Not Qualified to Question Program.

It is perfectly true that it was open to the appellee herein to show that the operation of this Seasonal Marketing Program directly burdened or effectively prevented the free flow of interstate commerce.

Appellee has failed utterly to make any such showing. No effect whatsoever upon any price of the commodity in its movement in or subsequent to interstate commerce is shown. No depreciation or curtailment of the movement of raisins in interstate commerce is shown. On the contrary a large excess over and above any demand is shown to be ready for movement in interstate commerce at any time desired.

²⁷Bulk of Oranges, *Sligh v. Kirkwood*, 237 U. S. 52, 35 S. Ct. 501, 59 L. ed. 835; 95% of lumber (*Arkadelphia Milling Co. v. St. Louis Southwestern R. R. Co.*, 249 U. S. 134, 150-152, 30 S. Ct. 237, 63 L. ed. 517); 80% of anthracite coal (*Heisler v. Thomas Colliery Co.*, *supra*); 100% of tobacco (*Townsend v. Yeomans*, 301 U. S. 441, 452, 27 S. Ct. 842, 847, 81 L. ed. 1210).

It is highly questionable whether the appellee in the present instance made any showing of any interstate commerce transactions or dealings by himself sufficient to even permit him to question the validity of the program upon this ground. He relies upon four contracts for the delivery by him of 762½ tons of raisins. These contracts [Plaintiff's Exhibits 1, 3, 4, 8 and 9] were negotiated and executed in the State of California by parties within the State of California, residents therein, and all called for delivery of the raisins at terminus within the State of California. Appellee himself admitted that he did not have any understanding with these purchasers that they would ship these raisins out of the state and that he did not care whether they were shipped out of the state or not. [R. 84.]

Subsequently in an effort to supply this showing the case was reopened "for the purpose of receiving testimony regarding the character of shipments by Mr. Brown, as to whether or not these shipments were interstate." [R. 139.]

Mr. Brown then testified that all of the five contracts heretofore referred to read "subject to shipping order." [R. 139.] But an examination of the contracts themselves fails to show any such language. They all read "F. O. B. —Kerman, California."

Mr. Brown then introduced a number of written shipping instructions [Plaintiff's Exhibits 10, 11, 12, 13 and 14. R. 148, 152, 154, 157] received from the buyers under his written contracts heretofore mentioned giving him instructions relative to the delivery or shipment of the raisins covered by the contracts. These show that the bulk of such raisins were destined to be shipped out of the State of Cali-

fornia. For instance, Exhibit 10 contains instructions to ship 1200 twenty-five pound packages of raisins to the port of Stockton for the Steamship Lillian Luckenbach sailing October 24, 1940, the port of Stockton being in California.

Exhibit 11 shows a shipping instruction from Haas Brothers addressed to M. E. P. McDonnell for account of the Empire Packing Company, which is the name under which Mr. Brown did business, requesting that 115 cases be booked for shipment through the Steamship Maukai and marked Hawaiian Quartermaster Depot, Honolulu. This was dated November 23, 1940. Mr. Brown's contract with the Dried Fruit Distributors of California [Plaintiff's Exhibit 8; R. 75.] shows E. P. McDonnell as the broker. The Dried Fruit Distributors got into some trouble and Mr. McDonnell asked to have this contract assigned to him. [R. 150, lines 39-42.]

As regards the shipment in interstate commerce and Mr. Brown's connection therewith we have this sequence: May 22, 1940, Brown's contract with the Dried Fruit Distributors of California for the delivery "F. O. B. Seller's Plant Kerman" of 10,000 twenty-five pound packages of raisins of the 1939 or 1940 crop at seller's option to be delivered in August, September and October of the same year. The Dried Fruit Distributors of California, who are located at Napa in that state, subsequently assigned their contract to E. P. McDonnell, a broker located at 112 Market Street, San Francisco, California, the latter in turn sells at least 115 cases of such raisins to Haas Brothers, wholesale grocers located at Third and Channel Streets, in San Francisco, and we note that all of these transactions are still intrastate within the State of California. Finally Haas Brothers makes a sale to the Army to be shipped to

the Quartermaster Depot at Honolulu. Haas Brothers then give instructions on November 23rd for these to be delivered at Pier 32 in San Francisco by December 10th for shipment to Honolulu.

These so-called shipping instructions were received by Mr. Brown in October, November and December of 1940. [R. 160.] In fulfilling these instructions which called for delivery beyond the point of Kerman, California, Mr. Brown made arrangements for such additional transportation and delivery charges and all expense thereof was paid by his contract buyer as additional charges beyond the contract price. [R. 160-63.]

Thus Mr. Brown's sole connection with interstate commerce, so far as raisins are concerned, is quite remote. Personally Mr. Brown as a packer operated exclusively *within* the State of California and purchased his raisins from growers exclusively *within* the State of California. As a packer he contracted with jobbers and wholesalers located *in* the State of California for the sale of raisins to be delivered by him *within* the State of California. At the time he made his contract he had no understanding that his buyers were going to ship such raisins out of the State and did not care whether they did or not. Some five to seven months later he received instructions from these buyers indicating that a large portion of such raisins were to go out of the State. It is quite apparent and is admitted that any such shipment out of the State resulted not from Mr. Brown's sales but from subsequent sales by the respective buyers to out-of-state purchasers. Or, as indicated in the case of Haas Brothers, Mr. Brown's buyers sold the raisins to another wholesaler *within* the State of California and this second wholesaler subsequently sold some of the

raisins for delivery out of the state. Mr. Brown admitted that the bulk of all of the raisins destined for shipment out of the State were to fill orders which his buyers had received subsequent to his sale. [R. 162-3.] In carrying out any such shipping instructions, Mr. Brown acted as the agent for such particular buyer wholly at the latter's expense and upon instructions received entirely separate and apart from his earlier contract for the sale of such raisins to the buyer.

In addition, Mr. Brown voluntarily participated in a similar program for the season of 1938-39 and applied for and received and accepted primary and secondary certificates for his raisins for that season. [R. 20, par. 16.] He participated in and accepted the benefits of the seasonal marketing program for 1938-39. Then when he sold raisins short in the spring of 1940 in the belief that no seasonal program would be put in effect for that season, he now attacks it as an unlawful interference with interstate commerce. We do not think he is in any position to invoke the equity powers of the courts to now enjoin this program.

Unsupported Findings.

In Finding I [R. 53] the court states that plaintiff is engaged in the raisin business and that the program in question has directly interfered with such business and damaged plaintiff in excess of \$3000.00. Despite objections [R. 22-4], the court refused to designate such business as either interstate or intrastate.

In Finding VI [R. 56-7] the court found that 90% to 95% of the raisins produced in said zone are consumed outside the State of California. This is true *only* as to the finished raisin product actually used for human con-

sumption. It does not take into consideration the inferior raisins used for by-products nor the annual surplus which is not sold either interstate or intrastate. This matter is definitely covered by the stipulation of facts. [R. 16, par. 9.] This was expressly called to the attention of the court [R. 25-6], but the court persisted in the erroneous finding.

In Finding VIII [R. 57] the court states that the picking and drying of the grapes in the vineyard completes the process of producing raisins and they are then ready for market as raisins and are a wholesome food. This rests purely upon the lower court's conclusion.

The only evidence upon this subject in the record is that the raw raisins in that form are never sold to the trade or to the consumer and "are not fit for commercial use until they have been stemmed and cleaned." [R. 119-121.] An examination of Defendants' Exhibits "B" and "C" [R. 112-113] and the 6% [R. 112] of dirt and stems removed bear visual testimony that the raw raisin is not a commercial trade product. This was brought to the attention of the lower court [R. 27] but such finding was not corrected.

These unsupported findings are not vital in themselves, but serve to show the erroneous factual impression under which the majority of the lower court labored in reaching their legal conclusions respecting interstate commerce.

CONCLUSION.

We believe that a surplus raisin, or orange, or grapefruit, on a surfeited market is an economically diseased article of commerce and is just as vicious a menace to interstate commerce as a physically diseased or rotten raisin, orange, grapefruit or any other commodity. We think that a state may regulate all movement in the former instance as well as the latter.

However we are not now called upon to cross that bridge. We are concerned here with the control in intrastate commerce only of a raw product. Theoretically such intrastate control of the raw product may affect the interstate movement of the finished product. Actually it has not done so.

The program in question attaches antecedent to any movement in interstate commerce, does not directly regulate and does not discriminate against such commerce, does not burden or obstruct the same and treats wholly of a local problem.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers and that the Court should review the decision of the District Court of the United States for the Southern District of California and finally reverse it.

Respectfully submitted,

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IN THE
Supreme Court of the United States

October Term, 1942

No. 46

W. B. PARKER, Director of Agriculture, AGRICULTURAL
PRORATE ADVISORY COMMISSION, RAISIN PRODUCTION
ZONE NO. 1, PROGRAM COMMITTEE, W. B. PARKER,
IRA REDFERN, LYMAN LANTZ, JAMES LANGFORD,
MARK G. JOHNSON, C. M. BROWN, W. F. DARSIE,
DR. DEAN MCHENRY, PRESTON MCKINNEY, H. C.
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BERG, MESROB MIRIGIAN, MELCHIOR HANSEN, A. L.
DAVIDSON, W. J. CECIL and J. C. HARLAN,

Appellants,

vs.

PORTER L. BROWN,

Appellee.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

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Appellee.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

Introductory.

This cause was argued at the October Term, 1941, and subsequently on May 11, 1942, this court ordered it restored to the docket for réargument on October 12, 1942, and made the statement that:

"In their briefs and on the oral argument counsel for the parties are requested to discuss the question

whether the state statute involved is rendered invalid by the action of Congress in passing the Sherman Act, the Agricultural Adjustment Act, as amended, or any other acts of Congress."

Inasmuch as regular briefs have heretofore been filed on the part of appellants and respondents, in the interest of brevity, we shall omit as far as possible anything appearing in our brief already filed. Reference to the opinion below, jurisdiction, and statement of the case will be found in that brief. We assume that no attack is intended upon the state statute itself but only as implemented by the particular 1940-41 Seasonal Marketing Program for Raisins here involved.

For the convenience of the court we attach a copy of the California Agricultural Prorate Act, revised to September 13, 1941, as an appendix to this brief. Sections 2, 15, 18, 18.1, 19.1, 21 and 23 were amended at the 1941 session of the State Legislature subsequent to the seasonal marketing program here involved, which became effective September 7, 1940, and expired May 31, 1941. However, none of such amendments affected any of the questions now under consideration.

The main or basic Marketing Program for Raisins, as Amended, effective July 23, 1940, is set forth in Exhibit "1" of the Statement as to Jurisdiction. The essential features (and practically all) of the 1940-41 Seasonal Marketing Program for Raisins are set forth in paragraph 13 of the Stipulation of Facts. [R. 18-19.]

Questions Presented.

We had assumed that the supplemental briefs now filed were to be confined to a consideration of the effect of Congressional action upon the seasonal program, but we are notified that the Solicitor General in his brief has attacked the program as being in violation of the Federal Interstate Commerce Clause and we are taking the liberty of replying to this. We have not found any acts of Congress pertinent other than the two specifically mentioned in the order. Therefore, the questions considered in this brief are:

1. Is the 1940-41 Seasonal Marketing Program for Raisins rendered invalid by the Federal Agricultural Adjustment Act as amended?
2. Is the 1940-41 Seasonal Marketing Program for Raisins rendered invalid by the Sherman Act?
3. Is the 1940-41 Seasonal Marketing Program for Raisins in violation of the Federal Interstate Commerce Clause?

Summary of Argument.

I.

The California 1940-41 Seasonal Marketing Program for Raisins is confined wholly to the production and handling of raw raisins before they pass into the hands of a processor. It is entirely an intrastate transaction.

Congress may invade this intrastate field and exercise its power over this matter of local concern only when and if it becomes essential to do so to protect interstate commerce in that commodity or its product.

The Agricultural Adjustment Act, as amended, authorizes the Secretary of Agriculture to occupy this field in pursuance of the administration of a designated policy when it becomes necessary to do so to protect interstate commerce.

The federal and state acts, while differing in some particulars, adopt the same economic policy of orderly regulated movement of the commodity, elimination of "gluts" with their consequent "famines," and protection of the farmer in securing a living return for his crop and relief from disastrously depressed prices resulting from unrestricted "dumping" of a crop upon a surfeited market.

The state act seeks to give the farmer the cost of production. The federal act seeks to obtain parity prices for him.

The Secretary of Agriculture has not applied the federal act to raisins and there is no showing that there is any occasion for him to do so. There is no indication that any such necessity exists as would warrant the exer-

cise of the federal commerce power over the raw raisin product to which the state program attaches.

In the absence of the exercise of such power by Congress through the Secretary of Agriculture the production and handling of the raw raisin product being a strictly intrastate matter remains wholly subject to the State control.

It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police power of the State, even when it may do so, unless its purpose to effect that result is clearly manifested. (*Savage v. Jones*, 225 U. S. 501, 537, 32 S. Ct. 715, 727, 56 L. ed. 1182 [1912]; *Allen-Bradley Local 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749, 62 S. Ct. 820, 825, 86 L. ed. [1942].

The State raisin program deals wholly with a local problem and would be valid even if Congress exercised its power, at least to the extent that it did not conflict with nor prevent the accomplishment of the purpose of the federal legislation.

Both federal and state acts provide for co-operation and collaboration between their respective governments in promoting the purposes of the respective statutes.

Acting under these provisions the agricultural officials of the respective governments met with each other. As a result the Commodity Credit Corporation, a federal agency, made a loan to the appellant, conditional upon the institution and maintenance of a raisin program under the California Agricultural Prorate Act. The 1940-41 Seasonal Marketing Program for Raisins was approved and in fact actually prepared and dictated by the federal

officials. The sale of the pooled raisins was completely governed by the federal officials under the express provisions of the Loan Agreement. This agreement was required to have (and had) the written approval of the Commodity Credit Corporation, the Secretary of Agriculture and the President of the United States.

Aside from all other considerations this approval by the Federal officials, acting under the Federal Act of the State Seasonal Raisin Program removed any question of conflict between the federal act and the state program. Accordingly, the State Seasonal raisin program is not superseded nor rendered invalid by the Agricultural Adjustment Act, as amended.

II.

Ours is a dual form of government of two separate and distinct sovereignties within the same territorial limits. Each is supreme within its own sphere.

Among the powers delegated to the Federal Government by the Constitution is the power "to regulate commerce with foreign nations, and among the several states, * * *"

The Sherman Act, as an exercise of this power, prohibits contracts, combinations, conspiracies and monopolies in restraint of interstate commerce.

Such contracts, combinations, etc., are not *malum per se*. They are only prohibited when condemned by statute. A state has the inherent power to permit or create such monopolies.

While federal legislation enacted in the exercise of its commerce power is the supreme law of the land, it should never be held that Congress intends to supersede or suspend the exercise of the police powers of the States unless its purpose to do so is clearly manifested.

The Sherman Act does not manifest any such purpose. It was directed against the evils of trusts and big businesses. No intent is expressed nor manifested or to be inferred that any State was subject to its prohibitions in the proper exercise of the latter's police powers.

The California raisin program is a proper exercise of the State's police powers for the benefit and protection of the public welfare.

For over 50 years the courts and text writers have universally acclaimed that the Act has no application to a monopoly created and wholly controlled and administered by a State. Acquiescence in this without change in the Act confirms its acceptance by Congress as a correct interpretation of congressional intent.

The holding in *Georgia v. Evans*, 316 U. S. 159, that a State in its proprietary capacity may sue for treble damages under the Sherman Act as a "person," does not change the fact that such Act does not apply its prohibitions against a State.

The California raisin program, approved of and jointly controlled by federal officials under the Agricultural Administration Act, as amended, cannot be said to be so

unreasonable and to so *unduly* restrain trade as to make it a violation of the Sherman Act.

Section 17 (15 U. S. C. A. 17) of the Anti-Trust Law and section 8b (7 U. S. C. A. 608b) of the Agricultural Adjustment Act, as Amended, directly exempt the State Raisin Program from the provisions of the Sherman Act or at least declare a policy which places said program outside of the "unreasonable" restraints which the Act condemns.

The amended complaint in this action will not support an injunction for violation of the Sherman Act. There is neither allegation nor proof of irreparable damage.

III.

The California raisin program is not in violation of the federal commerce clause. It attaches prior to any movement in interstate commerce and applies to an *intra*-state matter only.

The fact that California has virtually a monopoly of raw raisins in the United States does not transform the production of and other *intrastate* transactions in such raw raisins into *interstate* affairs.

Heisler v. Thomas Colliery Co., 260 U. S. 245.

ARGUMENT.

Preliminary.

The Seasonal Marketing Program for Raisins here involved covered the period from September 7, 1940, to May 31, 1941.

War has already wrought such a complete change in agriculture that we must with some effort recall the pre-war conditions in the consideration of these questions. Today we are concerned with "ceilings", then it was "floors".

Then governmental economic policy as expressed in agricultural marketing regulations, proration measures, and unfair price legislation was to protect against the ruthless, cutthroat competition on the part of sellers in a time of excess supply and to protect the farmer from having to market his products at prices below the cost of production.

Today such governmental policy is concerned with protection against the effect of ruthless competition on the part of buyers in a time of excess demand and the consequent feared inflation. It is a restraint on competition in both instances.

War time demands have practically exhausted the excess stock of raisins in the hands of the packers and government purchases have served to afford the grower some measure of the same protection against the packer which the State legislation and program sought to afford.

Today the necessity for such a raisin program is not urgent, and in other fruits where similar conditions exist the state prorate programs have been lifted.

But in considering this appeal we must bear in mind that there was then a crying need for this protection to the grower of agricultural commodities and both the Federal and State legislation now under consideration were shaped to that end originally.

The repercussions from a threatened invalidation of the state program and consequent possible illegal handling of a \$7,000,000.00 to \$8,000,000.00 crop give this appeal importance beyond the scope of this particular action.

I.

The Federal Agricultural Adjustment Act and the California Raisin Program.

History.

The Agricultural Adjustment Act was enacted May 12, 1933,¹ and after some amendments subsequently culminated so far as marketing orders pertaining to the commodity here in question is concerned in the Agricultural Marketing Agreement Act of 1937.²

The California Agricultural Prorate Act was enacted June 5, 1933. It has been amended at various sessions of the State Legislature since that time, the most marked change occurring in 1939 when the administration of the act was removed from an independent commission and placed within the State Department of Agriculture.

¹48 Stats. 31.

²50 Stats. 246; 7 U.S.C.A. 608c.

Both the Federal and State legislation grew out of the universally distressing condition in agriculture where because of excess supply and lack of demand farmers were forced to dispose of their crops for less than the cost of production. Both had the same aim, to aid the farmer and relieve his condition, and both adopted similar economic policies or principles and took similar means to carry out their like objective.

In 1936 the *Butler* decision³ rendered the Federal Act in its application to farmers and their production activities invalid as being an unlawful attempt to invade a field belonging exclusively to the several states.

This resulted in the Agricultural Marketing Act of 1937 limiting the powers of the Secretary of Agriculture with regard to marketing orders by providing that "Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof."⁴

At this point the primary objectives of the two enactments parted company; that of the State remained the same—to relieve the distressed situation of the farmer; but in the amended Federal statute this became a means only for carrying out its primary objective, to wit, regulation and necessary protection of interstate commerce.

³*United States v. Butler*, 297 U. S. 1, 56 S. Ct. 312, 80 L. Ed. 396.

⁴ 7 U.S.C.A. 608c (1).

Congress in this legislation has recognized the same distressing conditions in agriculture as are spoken of in the California Act; and has declared that the same general policy and the same general treatment of agriculture is essential for the protection of interstate commerce as the State has declared essential for the protection of the public welfare. But the Federal Act is necessarily confined to interstate commerce.⁵

It is true that the Federal Act has as its goal the achievement of parity prices for the farmer and that the State Act is more concerned with obtaining the cost of production, yet both recognize the necessity of assisting and protecting the farmer, both adopt similar economic policies and authorize the use of similar means to carry out the same. It may well be said that they complement each other, the one operating in the interstate field and the other in the intrastate field.

While the general policy and methods are the same in each Act, there are, of course, some differences. The

⁵The Chief Justice, in speaking of the Agricultural Adjustment Act, as amended, or the Agricultural Marketing Act of 1937, in *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 123, 62 S. Ct. 523, 528, 86 L. Ed. 431, said:

"* * * (its) phraseology was deliberately chosen to conform to that adopted in the opinion in the *Schechter* case (295 U. S. 495), as signifying the full reach of the commerce power, and with the avowed purpose of conferring on the Secretary authority over intrastate products to the full extent of that power."

and

"* * * 'the full extent of the Federal power over interstate and foreign commerce and no more is intended to be vested in the Secretary of Agriculture in connection with orders.'" (U. S. p. 124, S. Ct. pp. 528-9.)

regulation in each case is essentially an exercise of police power. The State could achieve this by a direct exercise of this power which it inherently possesses. The Congress could only act under the guise of exerting its interstate commerce power.

The State Act is much broader in the range of products covered. In the State Act its sanctions may apply to both grower and handler. The Federal statute, circumscribed again by the commerce power and recognizing that the grower is not engaged in interstate commerce, carefully directed its sanctions against the handlers only.

Nothing is more thoroughly established than that the mining and production of raw materials, the manufacturing of goods, and the growing of agricultural products are not in themselves interstate commerce. The distinction has been clearly drawn in a long line of cases from *Kidd v. Pearson* down.*

In the case of raisins it is only the finished processed product that moves interstate, sometimes from the packer, but more often from the jobber or wholesaler, while the production of the raw product and its sale to the packer, who, by the way, is required to function under a State processor's license, is wholly intrastate.

There is then this essential difference between the State raisin program and the Federal statute. The former is concerned wholly with the protection of the grower in the

**Kidd v. Pearson*, 128 U. S. 1, 9 St. Ct. 6, 32 L. Ed. 346; *United States v. Darby*, 312 U. S. 100, 113, 61 S. C. 451, 456, 85 L. Ed. 609.

marketing of his raw product to the packer. The latter is concerned wholly with regulation of the finished raisin product in interstate commerce and the protection of such commerce in that product.

There can be no gainsaying the fact that the bulk of the raisins produced within the State of California is shipped out of that state at some later period for final consumption outside its boundaries and that the industry within the state is dependent to a large extent for its successful existence upon this out-of-state market, while the nation at large is likewise dependent for its supply of raisins upon the State of California. This is well known to all of the industry, but no grower knows whether his particular raisins will ultimately be marketed in interstate or intrastate commerce.

This does not take the raw raisin product out of intrastate fields, for the general rule is well established that until an article actually moves in interstate or foreign commerce it remains within the local or state jurisdiction and is subject to such local or state regulation. This general rule is not altered by reason of the fact that the article involved may be specifically intended for such interstate or foreign commerce and may have been actually manufactured or produced for that specific purpose. Up until the time the commodity actually begins to move in interstate or foreign commerce it is under state control and subject to such police regulations as the public welfare may reasonably require.¹

¹*Coe v. Errol* (Logs 1886), 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed. 715; *Heisler v. Thomas Colliery Co.* (Coal 1922), 260 U. S. 245, 43 S. Ct. 83, 67 L. Ed. 237.

(a) FEDERAL AUTHORITY OVER INTRASTATE TRANSACTIONS AS AN ADJUNCT TO COMMERCE POWER.

The power of Congress to invade purely State fields in the protection of interstate commerce, if it exists at all, must have existed since the adoption of the Federal Constitution giving it the power to "regulate" such commerce. But it must be conceded that not until this power was applied in the National Labor Relations Board cases have the powerful Federal interstate commerce fingers clawed so deeply into the State's vitals.

The utmost extent of the application of this power is probably expressed by the bare majority opinion in the recent *Cloverleaf Butter* case* in the language of Mr. Justice Reed that:

"Not only does Congressional power over interstate commerce extend * * * to interstate transactions and transportation, but it reaches back to the steps prior to transportation and has force to regulate production 'with the purpose of so transporting' the product. (*Darby* case, *supra*.) It extends to the intrastate activities which so affect commerce as to make regulation of them appropriate means to the attainment of a legitimate end, regulation of interstate commerce."

**Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148, 153-4, 62 S. Ct. 491, 494-5, 86 L. Ed. 486. See, also, *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893; *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 59 S. Ct. 668, 671, 83 L. Ed. 1014; *United States v. Darby*, 312 U. S. 100, 117, 61 S. Ct. 451, 459, 85 L. Ed. 609; *United States v. Rock Royal Co-Op.*, 307 U. S. 533, 59 S. Ct. 993, 83 L. Ed. 1446; *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 119, 62 S. Ct. 523, 526-7, 86 L. Ed. 431.

Admittedly the great bulk of the finished raisin product moves in interstate commerce and the nation receives practically all of that product from California.

Under the doctrine just enunciated it follows that if it were found *necessary* to exercise authority over the raw raisin product in order to protect national commerce in the finished product, Congress would have that power under the Federal Commerce Clause.

There is no sound reason why the same doctrine would not apply equally to production if regulation thereof were found *necessary* to protect the interstate commerce, although the majority opinion in the lower court (and other opinions) by stressing that *actual* production is *not* involved seem to infer that such Federal power does not extend to local production.

Both the Federal and State Acts under consideration in this question are directed toward orderly movement of crops and correcting the economic evils of "gluts" with their consequent "famines," in the marketing of agricultural commodities; but in the Federal Act this is only one means toward establishment of farm parity prices which is the Congressional concept for the protection of interstate commerce. On the other hand, the State Act is not concerned with parity prices but seeks to assist the farmer to obtain his cost of production in order that he may maintain his rightful position in the State and bear his just proportionate share of its burden.

Disorderly marketing which the Federal law seeks to correct in interstate commerce⁹ results largely from dump-

⁹ U.S.C.A. 601, 602.

ing an excess supply upon an already saturated market. This brings a ruinous low return to the grower and is usually followed by a famine in that commodity. In interstate commerce this occurs almost wholly in fresh fruits and vegetables, such as oranges, peaches, grapefruit, lemons, melons, etc.

In the case of semi-perishables, such as raisins, this is not so apt to happen, for the finished or processed product rests in the hands of packers, wholesalers, jobbers, and dealers before it enters interstate channels. These merchants are ably fitted and prepared to move such product into the market, both interstate and intrastate, in an orderly manner to meet existing demands. The evils which the Federal Act seeks to correct do not exist in the raisin industry for there is no disorderly marketing in the interstate commerce movement of the finished raisin product, and the disorderly marketing of the raw raisin product in the intrastate movement does not burden, obstruct, or affect the interstate movement of the finished product.

The State, on the other hand, does face a problem in this semi-perishable product. The raw product matures in a few short weeks out of each year and the growers through financial necessity are forced to dispose of the fruit of their year's effort immediately upon this maturity.

Consequently the many small individual growers are at the mercy of the few large well organized packers who constitute the only outlet available to the grower for his raw product, with the result that the packers dictate the price to the growers.

The only relationship of this raw raisin product with interstate commerce rests upon the possibility that the State problem if not properly cared for may become so acute and the price to the grower forced so low that he will be unable to continue producing the raw raisin product. That this may occur was demonstrated in the past when that price fell below 1¢ per pound and some twenty thousand acres of vines were uprooted in Fresno County.¹⁰

The aim of the packers is to keep this price to the producer as low as possible without forcing the supply below the quantity sufficient to supply their demands. Generally speaking the packers have managed to do this very thing. At all times since 1937 the packers have had on hand from thirty to forty thousand tons more than they had call for either interstate or intrastate, and there has been no danger to nor any interference with the interstate supply and movement. [R. p. 17, lines 28-40; p. 137, lines 15-32.] Actually this same condition also held true for the most part prior to 1937.

When we consider that \$55.00 to \$60.00 per ton was a minimum cost of production¹¹ up until the increase in costs within the last year or so, we realize what a well calculated job the packers did in keeping the price from October, 1939, to September, 1940, before the seasonal program here in question took effect, at from \$42.50 to \$55.00 per ton.¹² It will be seen that this cost of production was well below the parity price which the Federal

¹⁰State Horticultural Commission Report of California, '38 Fruit Growers Convention, p. 92.

¹¹Appendix B, Tables 5, 6 and 7.

¹²Appendix B, Table 11.

Government was seeking to attain. Such parity prices for the same period range from \$85.70 to \$86.75 per ton.¹⁵ This resulted in the raisin growers of California operating at a constant loss, not sufficient as yet to become any threat to interstate commerce in the finished raisin product, but sufficient to create a serious local problem. These growers were forced to liquidate at a loss or continue producing by operating under sub-standard living conditions with the consequent inability to pay their share of State taxes and uphold their just proportion of the burden of local government.

This presented a purely local problem which the State should have met and did meet by means of the State Act and the 1940-41 Seasonal Marketing Program for Raisins.

During the period the seasonal program was in effect (September 7, 1940; to May 31, 1941), whether through this cause or otherwise, the price to the grower just about returned his cost of production ranging from \$55.00 to \$60.00 per ton. The entire amount of pooled raisins were disposed of by August of 1941 at an average price of \$60.51 per ton.

Since that time lend lease purchases have brought these prices up until now the Federal Government has taken over the entire 1942 crop at a price of \$110.00 per ton to the grower for Thompson seedless raisins.

We do not believe it can be successfully argued that the production of raw raisins and the sale of them by the grower to the packer for processing within the State is not ordinarily a purely local transaction and subject to

¹⁵Appendix B, Tables 8, 9 and 10.

the authority of the State and not to that of the Federal Government.¹⁴

"With respect to the federal power to protect interstate commerce in the commodities produced, there is obviously no difference between coal mined, or stone quarried, and fruit and vegetables grown." (*Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453, 465, 58 S. Ct. 656, 660, 82 L. Ed. 954.)

It is our position that the raisin industry in California is primarily a local activity. The production of the raw raisins, their handling and delivery to the packer, the processing or preparation of the raw raisin product into the finished product by the packers under State processing licenses, is purely local and all of such transactions, together with sales and deliveries from the packers to wholesalers and jobbers within the State, are subject to State control, regulation, and taxation. The raisins do not ordinarily pass from under this State control until they actually begin their movement in interstate commerce.

¹⁴*Kidd v. Pearson*, 228 U. S. 1, 20-1, 9 S. Ct. 6, 32 L. Ed. 346; *United Mine Workers v. Coronado Co.*, 259 U. S. 344, 407-8, 42 S. Ct. 570, 581-2, 66 L. Ed. 975; *Oliver Iron Co. v. Lord*, 262 U. S. 172, 178, 43 S. Ct. 526, 529, 67 L. Ed. 929; *United Leather Workers, etc. v. Herkert & Meisel Trunk Co.*, 265 U. S. 457, 465, 44 S. Ct. 623, 625, 68 L. Ed. 1104; *Industrial Association v. United States*, 238 U. S. 64, 82, 45 S. Ct. 403, 407, 69 L. Ed. 849; *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310, 45 S. Ct. 551, 556, 69 L. Ed. 963; *Schechter Corp. v. United States*, 295 U. S. 495, 547, 55 S. Ct. 837, 850, 79 L. Ed. 1570; *United States v. Butler*, 296 U. S. 1, 75-6, 56 S. Ct. 312, 323, 80 L. Ed. 477; *Chassaniol v. City of Greenwood*, 294 U. S. 584, 587, 54 S. Ct. 541, 542, 78 L. Ed. 1004; *Milk Control Board v. Eisenberg Farm Products*, 306 U. S. 346, 352, 59 S. Ct. 528, 531, 83 L. Ed. 752.

Even then they may be still subject to some State control provided the latter does not hinder, obstruct, nor burden such commerce and does not discriminate against the same.

On the other hand, we recognize that because the bulk of the finished raisin product moves in interstate commerce and because of the relationship existing between the production of the raw raisin product and the finished product that Congress may exercise control over this production of the raw product if it becomes *essential* and *necessary* for it to do so in order to protect the interstate commerce in the finished raisin product.

If, however, our reasoning is correct that this power of Congress over the raw raisin crop comes into being only when and if it is *essential and necessary* to exercise the same in order to protect the interstate commerce, then under the record in this case such Federal authority does not exist and did not exist at any time during the life of the 1940-41 Seasonal Marketing Program for Raisins.

The record here fails to show any unusual incident in the interstate transaction in the finished raisin product during the time the State program was in effect. (Appendix B.) There is absolutely nothing in the record upon the movement or prices of the finished raisin product in interstate commerce. The record does show affirmatively that there was no interference with the interstate supply. At all times there was an excess of raisins on hand to satisfy the utmost in interstate demand.

As far as the raisins here involved were concerned, the Federal Government, through the Secretary of Agriculture, had not seen fit to act, and we think rightfully so, because the contingency bringing the Federal commerce

power into being over the raw raisin product did not exist. Due to natural conditions or to adequate State action that contingency may never arise.

Conceding the potentiality of the Federal commerce power over the raw raisin product, that power may always remain potential and never blossom into actual being.

We may remark that after this raw raisin product is received from the grower by the packer the latter processes or prepares them for market under the regulation of a State processor's license, and this subsequent State control remains unquestioned.

(b) VALIDITY OF RAISIN PROGRAM IN EVENT OF
POSSIBLE FEDERAL ORDER.

We do not believe that the fact that a Federal order applicable to raisins had been made under the Federal Act would in itself necessarily invalidate the State program.

Bearing in mind that the State Act is to correct agricultural evils, whereas, the object of the Federal Act is to protect interstate commerce, they could well exist side by side if there were no actual conflict.

A Federal order might bear only upon the finished raisin product. Assuming a Federal order properly in effect, obviously no State program could exist in conflict with the same.

However, we are not faced with that question at this time for no Federal order has been made. On the contrary, the Federal Government has approved the State program here under consideration.

(c) EFFECT OF FEDERAL AGRICULTURAL LEGISLATION IN
ABSENCE OF ACTION THEREUNDER.

No order with respect to raisins is in effect under the Agricultural Adjustment Act, as amended. The Secretary of Agriculture has not seen fit to make any order applicable to the finished raisin product moving in interstate commerce. Likewise, either through lack of authority or because he felt there was no occasion therefor, and we think both, he has not made any order relative to the raw raisin product in the intrastate field.

Assuming that the Secretary of Agriculture may allot the amount of raw raisins which the packers may purchase from producers, the fact remains that he has *not* done so.

We do not anticipate that it will be seriously urged that the mere enactment of the Agricultural Marketing Agreement Act of 1937 of itself immediately placed all of the agricultural commodities included thereunder within the exclusive control of the Federal commerce power from the planting to the ultimate consumption of such commodities.

Even if it be assumed, for the sake of argument only, that the raw raisin product was definitely under the Federal commerce power, we believe that a Federal marketing order would have to be made, and one that was in conflict with the State seasonal marketing program for raisins, before the latter would be adversely affected.

It is well recognized that the State may exercise its regulatory powers over local matters directly affecting

interstate commerce until Congress exercises its authority upon the subject. This has been applied where the regulation itself directly affects such commerce and not merely where the subject regulated might possibly affect such interstate commerce as in the present instance.¹⁵

This court has more than once most emphatically declared that "the principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be' reconciled or consistently stand together.'" (*Kelly v. Washington*, 302 U. S. 1, 10, 58 S. Ct. 87, 92, 82 L. Ed. 3, 10-11 (1937).) "It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police power of the State, even when it may do so, unless its purpose to effect that result is clearly manifested."¹⁶

This is not one of those instances where the regulation bears *per se* directly upon interstate commerce, such as

¹⁵*Minnesota Rate Cases*, 230 U. S. 352, 33 S. Ct. 729, 57 L. Ed. 1511 (1913); *Sligh v. Kirkwood*, 237 U. S. 52, 35 S. Ct. 501, 59 L. Ed. 835 (1915); *Detweiler v. Welch*, 46 Fed. (2d) 75 (9 C.C.A. 1930); *Clason v. Indiana*, 306 U. S. 439, 59 S. Ct. 609, 83 L. Ed. 858 (1939).

¹⁶*Savage v. Jones*, 225 U. S. 501, 537, 32 S. Ct. 715, 727, 56 L. Ed. 1182 (1912); *Welch v. New Hampshire*, 306 U. S. 79, 84-5, 59 S. Ct. 438, 441, 83 L. Ed. 500 (1939); *Maurer v. Hamilton*, 309 U. S. 598, 614, 60 S. Ct. 726, 734, 84 L. Ed. 969 (1940); *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749, 62 S. Ct. 820, 825, 86 L. Ed. (1942).

quarantine, inspection, railroad, highway, and shipping laws. Even in these instances, and where Congress has acted, the State is left free to act upon such phases that are left untouched by the Federal regulation and are not in conflict therewith.¹⁷

Here, however, the object of the regulation is purely intrastate, although bearing such relationship to interstate commerce in the finished product as to make it subject to Congressional regulation in the event that such Federal action is necessary to protect the commerce power. Under such conditions we know of no instance in which the State has been deprived of its power over such intrastate fields unless and until Congress has found it necessary to act and has actually acted in a manner hostile to or directly in conflict with the State regulation.

When Federal regulation is actually effected in a proper case State control must yield to it, although both may still continue if there is no conflict or inconsistency in the two.

¹⁷*Merchants Exchange v. Missouri*, 248 U. S. 365, 368, 39 S. Ct. 114, 63 L. ed. 300 (warehousing, 1919); *Northwestern Bell Tel. Co. v. Nebraska*, 297 U. S. 471, 479, 56 S. Ct. 536, 80 L. ed. 810 (telephone depreciation, 1936); *Kelly v. Washington*, *supra* (inspection of hulls); *Welch v. New Hampshire*, 306 U. S. 79, 59 S. Ct. 438, 83 L. ed. 500 (maximum hours for drivers, 1939); *Ficholz v. Public Service Comm.*, 306 U. S. 268, 59 S. Ct. 532, 83 L. ed. 641 (interstate carrier permit, 1939); *Maurer v. Hamilton*, 309 U. S. 598, 60 S. Ct. 726, 84 L. ed. 969 (load size and weight, 1940).

Many instances may be found where Federal regulation has been held to exclude State regulation deemed to be inconsistent or in conflict therewith.¹⁸

On the other hand, numerous instances appear in which Federal action has not invalidated the State regulation.¹⁹

In practically all of the cases in which Federal action excluded State control, it will be found that Congress had definitely occupied the field, that the State regulation could not be reconciled with the Federal authority, and that the State regulation bore directly upon interstate commerce.

In the language of this court, "There can be no one crystal clear distinctly marked formula" (*Hines v. Davidowitz, supra*, U. S. p. 6; S. Ct. p. 404), to de-

¹⁸*Oregon-Washington Railroad Co. v. Washington*, 270 U. S. 87, 46 S. Ct. 279, 70 L. ed. 482 (plant quarantine, 1926); *McDermott v. Wisconsin*, 228 U. S. 115, 33 S. Ct. 431, 57 L. ed. 754 (labeling glucose, 1913); *Adams Express Co. v. Croninger*, 226 U. S. 491, 505, 33 S. Ct. 148, 57 L. ed. 314 (carrier liability, 1912); *New York Central v. Winfield*, 244 U. S. 147, 37 S. Ct. 546, 61 L. ed. 1045 (workmen's compensation, 1916); *Napier v. Atlantic Coast Line Railroad Co.*, 272 U. S. 605, 47 S. Ct. 207, 71 L. ed. 432 (locomotive boiler and safety devices, 1926); *Missouri Pacific v. Porter*, 273 U. S. 341, 345, 47 S. Ct. 383, 71 L. ed. 672 (interstate bill of lading, 1927); *Hines v. Davidowitz*, 312 U. S. 52, 66, 61 S. Ct. 399, 85 L. ed. 581 (alien registration, 1941); *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, 314 U. S. 498, 509, 62 S. Ct. 384, 86 L. ed. 322 (gas facilities, 1942); *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148, 62 S. Ct. 491, 86 L. ed. 486 (renovated butter, 1942).

¹⁹*Savage v. Jones*, 225 U. S. 501, 32 S. Ct. 715, 56 L. ed. 118 (labeling commercial feed stuff, 1912); *Mintz v. Baldwin*, 289 U. S. 341, 346, 53 S. Ct. 611, 77 L. ed. 1245 (cattle quarantine, 1933); *Kelly v. Washington*, 302 U. S. 1, 10, 58 S. Ct. 87, 82 L. ed. 3 (inspection of ship hulls, 1937); *Maurer v. Hamilton*, 309 U. S. 598, 60 S. Ct. 726, 84 L. ed. 969 (load size and weight for trucks, 1940); *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. (labor relations, 1942).

termine this question, but all are agreed (witness the majority and dissenting opinion, *Hines v. Davidowitz, supra*, *Cloverleaf Butter Co. v. Patterson, supra*), that a valid exercise by the State of its police power is superseded by Federal legislation *only* where the repugnance or conflict is so direct and positive that the two acts cannot be fairly reconciled or consistently stand together, and this is not to be accomplished by implication nor to be inferred from the mere fact that Congress has seen fit to occupy the field, but the Federal action fairly interpreted must show a repugnance or conflict with the State Act so direct and positive that the two could not be reconciled or consistently stand together.

We turn then to the Federal statute to see whether there is this direct and positive repugnance or conflict between it and the State raisin program and whether or not there is expressed in the Federal legislation by fair interpretation thereof a clear intent to supersede the exercise by the State of its police power over the production and handling of raisins in purely intrastate transactions.

The State raisin program as we have seen deals wholly with a purely local problem and seeks to insure the farmer the cost of his production by affording him a means for the orderly handling of his raw raisin product which makes it unnecessary to dump his entire year's crop on the market within the few short weeks of the maturity thereof. This saves him from the price depressing tactics exerted by the few organized packers who are his only outlet.

The Federal legislation declares that the condition it deals with is the "disruption of the orderly exchange of commodities in interstate commerce." (7 U. S. C. A.

601.) It declares that the policy of Congress is "to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish" certain parity prices and to protect the interest of the consumer by approaching this level by gradual correction at as rapid a rate as feasible. (7 U. S. C. A. 602.)

Administration of this Federal legislation is entrusted to the Secretary of Agriculture, who is authorized to issue orders with respect to certain agricultural commodities when he has determined, after hearing for that purpose, that such order will tend to effectuate the declared policy of the legislation with respect to the commodity under consideration. It is expressly provided that "Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof." (7 U. S. C. A. 608c.)

Section 8c(6) and (7) provide that any Federal order issued may provide for the limitation of the total quantity of the commodity, or of any grade, size or quality thereof, the allotment of the amount which each handler may purchase from or handle on behalf of any and all producers, the amount which each handler may market in or transport to a market in the current of interstate or foreign commerce, the extent of the surplus of any such commodity, and the control and disposition thereof, the establishment of pools, the prohibition of unfair methods of competition and unfair trade practices in the handling of the commodity, etc.

These provisions are very similar, although not as broad, as the ones provided for under the State Act in Sections 19 and 19.1 thereof.

The application of the Federal Act is limited to milk, fruit, tobacco, vegetables, soy beans, hops, honey bees, naval stores, and the products thereof. (Section 8c(2).)

The State Act has a somewhat wider scope, being applicable to any variety or kind of agricultural commodity (Section 8); and "commodity" is defined to mean any horticultural, viticultural, or vegetable product of the soil, live stock and live stock products and poultry and poultry products, but excluding milk or milk products. (Section 2(c).)

There is no definite statement in the Federal statute, nor in its legislative history, clearly expressing any Congressional intent that the enactment of such legislation in the absence of the issuance of an order thereunder precludes State regulation.

By the mere enactment of this statute, Congress can hardly be held to have intended to thereby exclude from State control all milk, fruit, tobacco, vegetables, soy beans, hops, honey bees, naval stores, and the products thereof, and this is equally true even if confined to such commodities or the products thereof as move in a substantial amount in interstate commerce. How and in what way, and to what extent, if any, does the State raisin program "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress?" (*Hines v. Davidowitz, supra.*) It is only "if the purpose of the (Federal) Act cannot otherwise be accomplished—if its operation within its chosen field must be frustrated and its provisions be refused their natural effect" that the State

regulation must yield to the regulation of Congress within the sphere of its delegated power. (*Savage v. Jones, supra*, U. S. p. 533, S. Ct. p. 726.)

No Federal order pertaining to raisins is possible until the Secretary of Agriculture, after a hearing, shall find upon evidence introduced thereat that the issuance of an order pertaining to raisins will tend to effectuate the declared policy of the Act, which is to establish and maintain such orderly marketing conditions in interstate commerce as will establish parity prices to the producer.

It is possible, and we think probable, that in the case of the raw raisin product such occasion will never arise. It is inconceivable to think that Congress ever intended that in such event the raw raisin product should go entirely unregulated and that the State should be excluded from affording any protection to the raisin grower from the packer.

The very fact that the Federal Act (Section 10(i)) specifically provides that the Secretary of Agriculture—"in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof. * * * and if authorized to cooperate with such authorities; * * * to issue orders * * * complementary to orders or other regulations issued by such authorities"—in itself declares the express intent of Congress that State marketing programs covering the commodities included within the Federal statute shall not only exist, but that they may exist side by side with Federal orders issued under such statute. The State Act, Section 19(b), likewise provides for collaboration and cooperation with any other State

or with the United States in the formulation and execution of a common marketing program.

This court in discussing a similar question²⁰ commented upon the case of *Reid v. Colorado*; 187 U. S. 137, 23 S. Ct. 92, 47 L. Ed. 108, wherein State regulation was held not to be excluded by the Federal Act and called attention to the fact that such Act expressly made reference to cooperation with State authorities.

In the present instance the Federal and State officials have acted under these respective cooperative provisions. The Solicitor General in his brief has set forth these cooperative steps very accurately and fully and we need not repeat them here. It is sufficient to say that the State 1940-41 Seasonal Marketing Program for Raisins was not only approved but was in fact actually prepared and dictated by the Federal officials. A loan was made by the Commodity Credit Corporation conditioned upon the institution of the State raisin program. The sale of the pooled raisins was completely governed by the Federal officials under the express provisions of the Loan Agreement. This was required to have (and had) the written approval of the Commodity Credit Corporation, the Secretary of Agriculture and the President of the United States.²¹

The *Tobacco* cases illustrate the question before us quite clearly. We feel that they strongly support the validity of the California Raisin Program.

²⁰*Oregon-Washington Railroad etc. v. State of Washington*, 270 U. S. 87, 101, 46 S. Ct. 279, 283, 70 L. ed. 482 (1926).

²¹Brief on Behalf of Appellants, p. 14; certified copy of Approval filed with Court.

In *Townsend v. Yeomans*,²² the Court had before it a Georgia statute enacted in 1935 fixing maximum charges for handling and selling leaf tobacco in the auctions at the tobacco warehouses.

In *Currin v. Wallace*,²³ this Court was called upon to determine the validity of the Federal Tobacco Inspection Act passed in the same year. That Act purported to regulate the same tobacco auctions involved in the *Yeomans* case by requiring inspection and certification of all tobacco before it could be offered for sale.

The tobacco statutes present a much greater degree of conflict and the Georgia statute impinges much more directly upon interstate commerce than is the case with the California Raisin Program. There was no question between a raw and a finished product in the *Tobacco* cases as there is with raisins. The tobacco was not held within the State of Georgia for indefinite periods after the auction nor was it processed or prepared for market as raisins are before they leave the state. The tobacco was shipped out of the State immediately after the auction sale instead of being held for periods up to two years as is done with raisins. 100% of the Georgia tobacco was shipped out of the state, as against 90% to 95% of the finished raisin product shipped out of the State and which probably constitutes less than 75% of the raw raisin crop.

In the *Townsend* case, the Court speaking of the effect of the Federal Act in response to the same attack made upon the State Act as is here made upon the California program said that "If it be assumed that Congress has

²²301 U. S. 441, 57 S. Ct. 842, 81 L. ed. 1210 (1937).

²³306 U. S. 1, 59 S. Ct. 379, 83 L. ed. 441 (1939).

that authority, it has not been exercised and in the absence of such exercise the State may impose the regulation in question for the protection of its people."²⁴ So in the instant case if there is authority under the Agricultural Adjustment Act, as amended, to regulate raisins, it has not been exercised, and accordingly California may impose its regulation until superseded by Federal action.

In the *Currin* case the Court upheld the validity of the Federal law and concluded that it had no need to change its views expressed in the *Townsend* case and that the Federal and State statutes were not necessarily in conflict.

Continuing in the *Townsend* case the Court said:²⁵

"It is inconceivable that the Congress in endeavoring to aid the tobacco growers in sorting or grading, and thus to facilitate the marketing of their tobacco, intended to deprive them of the protection they already had against the extortionate charges of the warehousemen upon whom they depended in making their sales. Instead of frustrating the operation of such state laws, the provisions of the act expressly afforded and emphasized the opportunity for cooperation with the states in protecting the farmers' interests."

The Agricultural Adjustment Act, as amended, contains like provisions for cooperation with the states in protecting the farmers' interests by means of these similar orders. We may well say in the present instance that it is inconceivable that the Congress in endeavoring to aid

²⁴*Townsend v. Yeomans*, *supra*, U. S. p. 452, S. Ct. p. 847.

²⁵U. S. p. 454, S. Ct. p. 848.

the farmers in the orderly marketing of their (raisins) intended to deprive them of the protection they already had against the ruinous prices paid by the packers upon whom they depended in making their sales. Instead of frustrating the operation of such State regulation, the provisions of the Act expressly afford and emphasize the opportunity for cooperation with the states in protecting the farmers' interests.

It seems incredible that a Federal Act merely authorizing administrative action over agricultural commodities moving in interstate commerce in the event of certain contingencies can thereby be said to have exclusively occupied the field as to all of such commodities in the absence of any such administrative action and to the extent that all State regulation is excluded.

We believe it is clear that there can be no conflict between the Agricultural Adjustment Act, as amended, and the California Raisin Program unless and until the Secretary of Agriculture issues a marketing order covering raisins. However, any possibility of doubt on this question is removed in the present instance by the fact that the Secretary of Agriculture, acting under the provisions of the Federal law, affirmatively approved the California 1940-41 Seasonal Marketing Programs for Raisins. He not only approved it, but, together with other Federal officials and agencies, prepared and dictated its terms and supervised the handling and disposal of the pooled raisins.

No question of State and Federal conflict ought now be allowed to enter this case, for it presents a splendid example of the co-operation which should be the ultimate aim in our dual system of government.

II.

• The Sherman Anti-Trust Law and the California Raisin Program.

Whether the California Agricultural Prorate Act as applied through the 1940-41 Seasonal Marketing Program for Raisins is rendered invalid by the action of Congress in passing the Sherman Act, a query raised by the Court and not by respondent, may be divided into three questions:

1. Is a State subject to the inhibition of the Sherman Act?
2. If so, does the raisin program in question violate the provisions of that Act? and
3. If so, may such program be enjoined in the present action?

A negative answer to any one of these three queries is fatal to a successful attack upon the raisin program by means of the Sherman Act in this proceeding.

1. IS A STATE SUBJECT TO THE SHERMAN ACT?

In considering this question it is probably well to remember that we are not dealing with inferior political subdivisions of a central government but with sister sovereignties, each supreme in her own field.

The reservation to the States respectively by the Tenth Amendment²⁶ only means the reservation of the rights of

²⁶*Tenth Amendment United States Constitution*: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

sovereignty which they respectively possessed before the adoption of the Constitution of the United States and which they had not parted from by that instrument.²⁷

The general government and the States, though both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, as expressed by the Tenth Amendment, "reserved," should be as independent of the general government as that government within its sphere is independent of the States. (*Buffington v. Day*, 78 U. S. (11 Wal.) 113, 124, 20 L. Ed. 122.)

While the complexities of present day civilization have resulted in considerable Federal infiltration into the very heart of local State activities, still we are reassured by this Court's recent pronouncements.

Ours is a dual form of government. In every State there are two governments, the State and the United States. Each State has all the governmental powers save such as the people by their Constitution have conferred upon the United States, denied to the States, or reserved to themselves. The Federal Union is a government of delegated powers having only such as are expressly conferred upon it or may be reasonably implied from those granted.²⁸

²⁷*Gordon v. U. S.*, 117 U. S. 697, 705, 29 L. ed. 136; *U. S. v. Williams*, 194 U. S. 295, 24 S. Ct. 719, 48 L. ed. 979.

²⁸*U. S. v. Butler*, 297 U. S. 1, 63, 56 S. Ct. 312, 318, 80 L. ed. 477 (1935).

Although the decision has been limited by later pronouncement, it is well to pause and reflect upon the language of the late Mr. Justice Sutherland:^{28 1/2}

"Every journey to a forbidden end begins with the first step; and the danger of such a step by the Federal Government in the direction of taking over the powers of the States is that the end of the journey may find the States so despoiled of their powers, or—what may amount to the same thing—so relieved of the responsibilities which possession of the powers necessarily enjoined, as to reduce them to little more than geographical subdivisions of the national domain."

In extending the Federal commerce power under the National Labor Relations Board cases this Court took pains to point out that the authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several states" and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system.²⁹

The subject of Federal power is still "commerce,"—not all commerce, but commerce with foreign nations and among the several states. The expansion of enterprise has vastly increased the interests of interstate commerce, but

^{28 1/2}*Carter v. Carter Coal Co.*, 298 U. S. 238; 295-B, 56 S. Ct. 855, 866, 80 L. Ed. 1160 (1936).

²⁹*National Labor Relations Board v. Jones and Laughlin*, 301 U. S. 1, 30, 57 S. Ct. 615, 621, 81 L. ed. 893 (1937).

the constitutional differentiation still obtains. Activities local in their immediacy do not become interstate and national because of distant repercussions.⁴⁰

However, this dual sovereignty does not afford either government the right to thwart the proper exercise of the powers of the other in the field in which the other is supreme. Clause 2 of Article VI of the Federal Constitution makes that Constitution and the laws of the United States which shall be made in pursuance thereof the supreme law of the land, anything in the laws of any State to the contrary notwithstanding. It is clear that no State by reason of its sovereignty may *override* the restriction of a valid law enacted by Congress pursuant to the Constitution.⁴¹

What we have already said in discussing the Agricultural Adjustment Act, as amended (*supra*, pp. 23-34), is applicable here. The authorities gathered there voice the reiterated and emphatic pronouncement of this Court that it should never be held that Congress intends to supersede or suspend the exercise of the police powers of the States unless its purpose to effect that result is clearly manifested. Such an intent should be even more clear

⁴⁰*Schechter Poultry Corp. v. U. S.*, 295 U. S. 495, 546, 554, 55 S. Ct. 837, 850, 853, 79 L. ed. 1570 (1934); *Santa Cruz Packing Co. v. National Labor Relations Board*, 303 U. S. 453, 466, 58 S. Ct. 656, 660, 82 L. ed. 954 (1938).

⁴¹*Northern Securities Co. v. U. S.*, 193 U. S. 197, 332, 24 S. Ct. 436, 455, 48 L. ed. 679 (1904); *Board of Trustees University of Illinois v. United States*, 289 U. S. 48, 57, 53 S. Ct. 509, 510, 77 L. ed. 1025 (1932).

and express when it serves not only to suspend the police powers, but to subject the sovereignty of the State to the inhibition and penalties of Congressional action. "These principles have guided judicial decisions for more than a century. Clearly they not only are inevitable corollaries of the constitutional provision but their unimpaired enforcement is of the highest importance to the continued existence of our dual form of government." (*Milk Control Board v. Eisenberg Farm Products*, 306 U. S. 346, 351, 352, 59 S. Ct. 528, 530-31, 83 L. Ed. 752 (1939).)

A State has never to our knowledge been held subject to the inhibitions of the Sherman Act when acting in the direct administration of its police powers. Practically all text writers agree that the prohibition of the statute extends only to those monopolies created by persons or corporations and has no application to a monopoly created and wholly controlled by a State, which is a sovereign having no derivative powers and not a person or corporation.³²

While not specifically involving an attack under the Sherman Act, it has been generally held that the doctrine of "monopoly" does not apply to business conducted by the State in the exercise of its governmental function, such as the exclusive control of the traffic in intoxicating liquor. "*The doctrine of 'monopoly' cannot be applied to*

³²41 *Cor. Jur.* 112; 19 *R. C. L.* 56, Sec. 31; 36 *Am. Jur.* 630, Sec. 162; *Thornton Combinations in Restraint of Trade*, p. 536; 20 *Am. & Eng. Encyc. of Law* 861; *Curtis, Manual of the Sherman Law*, p. 191, Sec. 406; *Joyce on Monopolies*, pp. 200-1, Sec. 165.

a state in exercising governmental functions. ³³ (Emphasis added.)

To the same effect see *Utah Manufacturers Association v. Stewart*, 82 Utah 198, 23 Pac. (2d) 229.

In 1895 the State of South Carolina passed an act forbidding the manufacture or sale of intoxicating liquors as a beverage within the limits of the State by any private individual and vesting the right to manufacture and sell all such liquors in the State exclusively through certain designated officers and agents. A citizen of North Carolina shipped a barrel of whiskey to a customer in South Carolina which was seized by the State officials as in violation of the statute and thereupon he brought an action for treble damages under the Sherman Anti-Trust Act; and this question was presented squarely to the United States Circuit Court.

The Court said³⁴ that it was impossible after examination of the State Act "to avoid the conclusion that it declares in the state the monopoly in the purchase and sale of alcoholic liquors. Not only so, but it protects this

³³*State v. Aiken* (1894), 42 So. Car. 222, 20 S. E. 221, 228, 26 L. R. A. 345; and cases collected in Annotation 121 A. L. R. 303. Considering a similar liquor statute in North Carolina the court in *Guy v. Cumberland County*, 122 N. C. 471, 29 S. E. 771, 772, said, quoting from the dissenting opinion of Mr. Justice Brown in *Scott v. Donald*, 165 U. S. 58, 104, 17 Sup. Ct. 274:

"Granting that the act gives the State itself a monopoly of all traffic in such liquors, it is not a monopoly in the ordinary or odious sense of the term, where one individual or corporation is given the right to manufacture or trade which is not open to others, but a monopoly for the benefit of the whole people of the State, the profits of which, if any, are enjoyed by the whole people; in short, a monopoly in the same sense in which the Post Office Department and the right to carry the mails is a monopoly of the Federal Government."

³⁴*Loewenstein v. Evans*, 69 Fed. Rep. 908, 910.

monopoly in the state in every way possible and by the most drastic methods." It was pointed out that the Act does not create in nor give to any individuals the monopoly but "gives it wholly and entirely to the state."

There, as here, the control was vested exclusively in the State and not in any individuals. There, the State exercised complete control over 100% of the liquor; here, it exercises control over 70% of the raw raisins. There, the State exercised exclusive control over the price; here, control over the price was actually exercised by the Federal Government. The question to be determined here is the same as stated by the Court there,—“whether, in declaring and asserting this monopoly in herself, and in assuming and controlling its enforcement, the state comes within the provisions of the act of congress of 1890.” It was held that the State was not object to the Sherman Act.³⁵

We find only one instance in which this question has been presented to this Court. That was in 1904 in a case involving pilotage laws of the State of Texas providing for the State licensing and appointment of pilots in the

³⁵*Lowenstein v. Evans, supra*, p. 911: “But by this act the state makes no contract, enters into no combination or conspiracy. She declares and asserts in herself the monopoly in the purchase and sale of liquors. The section of the act of 1890, sued upon, gives a right of action for any injury by any other person or corporation. The state is not a corporation. A corporation is a creature of the sovereign power, deriving its life from its creator. The state is a sovereign having no derivative powers, exercising its sovereignty by divine right. The state gets none of its powers from the general government. * * * Nor can it be said that the state is a person in the sense of this act. Even were this the case, as the monopoly now complained of is that of the state, no relief can be had without making the state a party, and this destroys the jurisdiction of this court.”

ports of that State, and prohibiting any other person from acting as such a pilot.³⁶

Among other attacks made upon the State regulation, the contention was made that "the commissioned pilots have a monopoly of the business, and by combination among themselves exclude all others from rendering pilotage services, * * *." In considering the application of the anti-trust laws this Court held that "if the State has the power to regulate, and in so doing to appoint and commission, those who are to perform pilotage services, it must follow that no monopoly or combination in a legal sense can arise from the fact that the duly authorized agents of the State are alone allowed to perform the duties devolving upon them by law." True, the type or character of monopoly in that case and the present instance are quite dissimilar but the effect there upon interstate commerce was much more direct than in the present instance. It would seem that the principle announced there "that no monopoly or combination in a legal sense can arise from the fact that the duly authorized agents of the State are alone allowed to perform the duties devolving upon them by law" would apply equally here and that no monopoly or combination in a legal sense can arise here from the fact that the duly authorized officials of the State (or the State) are alone allowed to perform the duties devolving upon them by law or to exercise the powers conferred.

Since the time these decisions and the statements of the text writers appeared, this Court has recently held that the United States is not a "person" (*U. S. v. Cooper*

³⁶*Olsen v. Smith*, 195 U. S. 332, 25 S. Ct. 52, 55, 49 L. ed. 224.

Corp., 312 U. S. 600, 61 S. Ct. 742, 85 L. Ed. 1071 (1941)), but that a State is such a "person" (*Georgia v. Evans*, 316 U. S. 159, 62 S. Ct. 972, 86 L. Ed. (1942)), within the meaning of the Sherman Act.

In both of these actions the United States and the State of Georgia, respectively, brought the proceedings to recover treble damages under Section 15 of the Sherman Anti-Trust Act. The only question in the two cases was whether by the use of the phrase, "any person," Congress intended to confer upon the United States and any State, respectively, the right to maintain an action for treble damages against a violator of the Act. The opposite results reached in the two cases could only be arrived at by disregarding the strict confines of literal interpretation of the language of the statute and by giving full scope to every possible aid in determining Congress' true intent.

In the *Cooper* case the Court recognizes that "In common usage the term 'person' does not include the sovereign" and that "statutes employing the phrase are ordinarily construed to exclude it." This principle, equally applicable to the sovereignty of the State, was not referred to in the *Georgia* case. Both cases recognize that there is no hard and fast rule, but that "the purpose, the subject-matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by the use of the term, to bring state or nation within the scope of the law."⁸⁷

The *Cooper* case recognized that the use of the phrase, "any person," is in itself insufficient to include the govern-

⁸⁷*U. S. v. Cooper Corp.*, *supra*, U. S. pp. 604-5, S. Ct. pp. 743-4; *Georgia v. Evans*, *supra*, S. Ct. p. 974.

ment, and states that this conclusion is supported by the fact that if the purpose was to include the United States the ordinary dignities of speech would have led to its mention by name. This conclusion should hold equally true in its application to a sister sovereignty, such as a State, especially when it comes to the imposition of civil and criminal penalties. The interpretation resulting in the respective conclusions in the two cases was then drawn from the "structure of the act, its legislative history, the practice under it, and past judicial expressions."³⁸

In the *Cooper* case, in addition to the fact "that the text of the act, taken in its natural and ordinary sense, makes against the extension of the term 'person' to include the United States,"³⁹ the controlling factor in deducing the intent of Congress seems to have been that by the terms of the Act the United States is given the exclusive right to prosecute violations criminally (15 U. S. C. A. 3) and by forfeiture and seizure (15 U. S. C. A. 6) and by injunction (15 U. S. C. A. 4), which latter right was also exclusive until the amendment by the Clayton Act (15 U. S. C. A. 26)

In the *Georgia* case, as stated by the Court, "the considerations which led to this construction are entirely lacking here. The State of Georgia, unlike the United States, cannot prosecute violations of the Sherman law. Nor can it seize property transported in defiance of it"⁴⁰

The decision in the *Georgia* case is quite plainly based upon the ground that there is "no reason for believing

³⁸*Georgia v. Evans, supra*, S. Ct. p. 973.

³⁹*U. S. v. Cooper Corp., supra*, U. S. 614, S. Ct. 748.

⁴⁰*Georgia v. Evans, supra*, S. Ct. 974.

that Congress wanted to deprive a State, as purchaser of commodities shipped in interstate commerce, of the civil remedy of treble damages which is available to other purchasers who suffer through violation of the Act" and the fact that "such a construction would deny all redress to a state, when mulcted by a violator of the Sherman Law, merely because it is a State."⁴¹

In each case it is pointed out as a corollary that if a State may bring an action as plaintiff it is likewise subject to the penalties of the Act as a defendant. The opinion in the *Cooper* case says:⁴² "It is hardly credible that Congress used the term 'person' in different senses in the same sentence. Yet, unless it did, the United States would not only be entitled to sue but would be liable to suit for treble damages." The dissenting opinion⁴³ in the *Cooper* case points out that "That question is not before us and need not be decided. Other principles will be material if such a question ever should be presented."

It is apparent that none of the reasons motivating the conclusion reached by the Court in the *Georgia* case are present in considering whether a State is subject to the inhibitions of the Sherman Act and can be sued for violation thereof. Admittedly, if we look solely to the phrase of the statute, "any person", it should apply equally to a State in the one instance as in the other. However, in the light of these decisions, if we look solely to that phrase it would not apply to State or Federal government in either instance.

⁴¹*Ibid.*

⁴²*U. S. v. Cooper Corp., supra*, U. S. p. 606/S. Ct. p. 744/

⁴³U. S. p. 619; S. Ct. p. 750, note 5.

We may assume that Congress in the proper exercise of its constitutional powers may make such legislation directly applicable to a State by express provision to that effect.

In determining, however, whether a State is subject to the provisions of the Sherman Act or the inhibitions thereof, we start from the premise that no such express provision or intention appears in the statute itself. We next have the principle that the phrase "any person" including "corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country" (15 U. S. C. A. 7) is ordinarily construed to exclude a sovereign government.⁴⁴

Ordinary respect for the sovereignty of the State should; and we think undoubtedly would, lead Congress, in those instances where it possessed the power, to expressly declare its intent to subject the State to the provisions of its legislation. Such an intendment, if it exists, should not be left to inference nor to be conceived by the courts by means of implication and interpretation.

There is nothing in the legislative history of the Sherman Act conveying or even hinting at the slightest intent to apply the provisions of that Act to any State in the exercise of its governmental powers.

⁴⁴U. S. v. *Cooper Corp.*, *supra*, U. S. p. 604, S. Ct. p. 743; *In re Fox*, 52 New York 530, 11 Am. Rep. 751; U. S. v. *Fox*, 94 U. S. 315, 321, 24 L. ed. 192; *McBride v. Pierce County Commissioners*, 44 Fed. 17, 18; *West Coast Manufacturing and Investment Co. v. West Coast Improvement Co.*, 25 Wash. 627, 669 Pac. 97, 103, 62 L. R. A. 763; *Banton v. Griswold*, 95 Maine 445, 50 Atl. 89, 90; *Onondaga County Savings Bank v. Love*, 3 N. Y. Supp. (2d) 428, 432, 166 Misc. 697; *Huffman v. State Roads Commission*, 152 Md. 566, 137 Atl. 358, 365.

On the contrary, the philosophy of the Act,⁴⁵ and the language of Mr. Chief Justice White in the *Standard Oil* case,⁴⁶ and that of the present Chief Justice in the *Apex Hosiery* case,⁴⁷ absolutely repel any such intent.

As was said in the *Apex Hosiery* case,⁴⁸ the Sherman Act "was enacted in the era of 'trusts' and of 'combinations' of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern." We find ample support for the fact that this law was not intended to apply to States in the extensive notes accompanying the decision in the *Apex Hosiery Company* case. "Clearly, the law was inspired by the predatory competitive tactics of the great trusts." (15 Ency. Soc. Sciences, 111, 113.) "Senator Sherman asserted that the bill prevented only 'business combinations'" (21 Cong. Rec. 2457). "Senator George denounced trusts which crush out competition 'and that is the great evil at which all this legislation ought to be directed.'" (*Ibid.* 3147.) It may well be said that Congress when it enacted the Sherman law never even dreamed, let alone intended, that its provisions should be applied to a State in the exercise of the latter's police power or governmental functions.

To hold the State within the prohibition of the Sherman Act in the present instance would result in prohibiting it

⁴⁵Edward P. Hodges, "Anti-Trust Act and the Supreme Court," pp. 4-6.

⁴⁶*Standard Oil Co. v. United States*, 221 U. S. 1, 58, 31 S. Ct. 502, 515, 155 L. ed. 619 (1910).

⁴⁷*Apex Hosiery Co. v. Leader*, 310 U. S. 469, 492-3, 497-8, 60 S. Ct. 982, 992, 994-5, 84 L. ed. 1311 (1940).

⁴⁸U. S. pp. 492-3, S. Ct. p. 992.

from exercising its otherwise valid police powers. This Court has repeatedly and emphatically stated that "it should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the State, even when it may do so, unless its purpose to effect that result is clearly manifested."⁴⁹

We have already mentioned that up until the present time the courts and text writers have universally considered a State to be without the prohibition of the Sherman Act and that State control was not a monopoly within that meaning.⁵⁰ This contemporaneous construction by the bench and the legal profession since the passage of the Act in 1890, supported by the long acquiescence on the part of Congress and its continued use of the same language without amendment in that respect, is strong evidence⁵¹ that Congress never intended to subject a State to the provisions of the Sherman Act, notwithstanding that it may have intended for the State to have the benefit of such legislation.

2. DOES THE STATE SEASONAL PROGRAM FOR RAISINS VIOLATE THE PROVISIONS OF THE SHERMAN ACT?

Assuming for the sake of argument that a State is subject to the provisions of the Sherman Act, the question then remains, does the California 1940-41 Seasonal Marketing Program for Raisins violate the provisions of that Act.

⁴⁹*Supra*, pp. 24, 27, 38-9.

⁵⁰*Supra*, pp. 39-42.

⁵¹*Matz v. Chicago etc. Railway Co.*, 85 Fed. 180; *People v. Bloom*, 85 N. E. 824, 193 N. Y. 1, 127 Am. Rep. 931; 18 L. R. A. (N. S.) 868, 15 Ann. Cases 932; *Lowman etc. Co. v. Erwin*, 157 Wash. 649, 290 Pac. 221.

The Solicitor General³⁰ has very clearly and accurately set forth the negotiations between the Federal and State governments in connection with this Seasonal Marketing Program for Raisins and it is not necessary to repeat the same here. Briefly summarized it may be said that the institution of said seasonal program was insisted upon as a condition precedent to a Federal loan, that the program itself was not only dictated but practically prepared by the Federal officials and that the handling of the pooled raisins, especially the sale, the price, the amount, and time of delivery were exclusively in the hands of such Federal officials.

We understand that the Solicitor General takes the position that this approval and the active participation in and domination of the program by the Federal officials removes any conflict with the Agricultural Adjustment Act as amended, but leaves it in his opinion invalidated by the provisions of the Sherman Act.

The Sherman Act denounces every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations and the monopoly or attempt to monopolize any part of such interstate commerce.

It does not denounce such restraint or monopoly of intrastate trade or commerce. It does not apply to intrastate restraints or monopolies unless and until they actually burden or obstruct interstate commerce. It is only when the intent or necessary effect of such intrastate

³⁰Brief for the United States as *Amicus Curiae*, pp. 18-20.

restraint or monopoly is to burden or obstruct interstate commerce that it violates the Sherman Act.⁵¹

We reiterate that the full extent of the State raisin program is confined wholly to a local activity in a purely intrastate field. Absolutely no intent appears to burden or obstruct interstate commerce. On the contrary the provisions of the program are exactly in line with the policies which Congress has declared are essential to protect interstate commerce. Preparation of and participation in that program by the Federal officials selected by Congress to administer that policy should effectually remove any thought of obstruction to or injurious effect upon interstate commerce.

It has been argued that because most of the finished raisin product moves in interstate commerce Federal control thereby extends to the production of the raw raisins and intrastate transactions therein. We know of no authority, and none has been cited, that holds that because the bulk, or even all, of a commodity moves in interstate commerce that the production, manufacture and all other ordinarily intrastate activities in that commodity are thereby *ipso facto* transformed into interstate transactions and placed under the exclusive control of the Federal commerce power.

We have conceded that Congress may invade that intrastate field, otherwise subject to State control exclusively. But it may do so only for the purpose of protecting, and

⁵¹*United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 408-9, 42 S. Ct. 570, 582, 66 L. ed. 975; 2nd Case, 268 U. S. 295, 310, 45 S. Ct. 551, 556, 69 L. ed. 970; *United Leather Workers v. Herkert*, 265 U. S. 457, 471, 44 S. Ct. 623, 68 L. ed. 1104; *Industrial Ass'n v. U. S.*, 268 U. S. 64, 45 S. Ct. 403, 69 L. ed. 849.

when it becomes necessary to protect, the national commerce in that commodity, or a product thereof. That power does not depend upon the percentage of the total commodity that moves in interstate commerce.⁵²

We can agree with respondent that Congress has the power to exercise control over these local activities of production, etc., when necessary to protect interstate commerce. But, we can agree that such potential power removes these local activities from State regulation *only* when Congress has actually so acted in a proper case, and even then only to the extent that the State regulation directly conflicts with the Federal action.

That such potential Federal power over *intrastate* transactions immediately transforms them into *interstate* transactions and excludes them from State authority is, we think, the fallacious premise upon which most of respondent's argument rests.

The fallacy of such premise appears from one of the latest decisions⁵³ of this Court involving the National Labor Relations Act and the Wisconsin Employment Peace Act. A labor dispute had arisen which was admittedly subject to the Federal Act, but the Federal Board had not taken any action nor attempted to exercise any jurisdiction. The State Board, however, assumed jurisdiction under the State Act and made an order. The Wisconsin Supreme Court upheld the order of its State

⁵²*Santa Cruz Packing Co., supra*, U. S., 467, S. Ct. 661; "The exercise of Congressional power under the Sherman Act * * * has never been thought to be constitutionally restricted because in any particular case the volume of the commerce affected may be small." *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 606, 59 S. Ct. 668, 671-2; 83 L. ed. 1014.

⁵³*Allen-Bradley Local 1111 v. Wisconsin etc. Board, supra*.

Board saying that "there can be no conflict between the acts until they are applied to the same labor dispute."

This Court in affirming the Wisconsin court said: "We cannot say that the mere enactment of the National Labor Relations Act without more excluded state regulation of the type which Wisconsin has exercised in this case."

This same case also emphasized the distinction we have attempted to make in the instant case between regulation in a "traditionally local matter," such as we have here, and in matters of international relations or national commerce, such as quarantine laws and railroad rates. In this latter field the implication that any federal action conflicts with and supersedes state regulation is much greater.

Another distinction to be drawn in cases such as this which do not involve interstate commerce intrinsically, but may become subject to the federal regulatory power in the protection of such commerce, is that, even where the restraint or monopoly complained of does obstruct or restrain such commerce, there is no violation of the Sherman Act unless such obstruction or restraint is actually intended or unless the restraint or burden is so direct and substantial that the intent must be inferred. (*United Mine Workers v. Coronado Coal Co.*, *supra*, U. S. 410-11, S. Ct. 583.)

The record is utterly deplete of any showing of obstruction or restraint of interstate commerce by means of the State seasonal raisin program. The Act, itself, provides for trade stimulation efforts to increase consumer outlets. [Sec. 19.1(e), Appendix A.] Since admittedly from 90% to 95% of the finished raisin product (approximately 75% of the raw raisin crop) must find consumer outlets beyond the State's borders, reason would have to

be thrown to the wind to impute to the State any intent to burden or obstruct that interstate market.

Putting aside for the moment the fact that the State raisin program confines itself wholly to an intrastate matter, and the fact that it did not in reality burden or obstruct interstate commerce, and the fact that no intent was shown and no intent could possibly be inferred to cast any burden or restraint upon interstate commerce, there remains the further necessity of showing it to be an *unreasonable* restraint before it can be held to be in violation of the Sherman Act.

(a) The Sherman Act Is Circumscribed by the Rule of Reason.

The "rule of reason"⁵⁴ is now established beyond successful controversy.⁵⁵ Applying this rule in *U. S. v. American Tobacco Co.*, *supra*, U. S. pp. 178-9, S. Ct. p. 648, the Court said that the Sherman Act "only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by *unduly* restricting competition, or *unduly* obstructing the due course of trade, or which, * * * injuriously restrained trade. * * *." (Emphasis added.)

Stated in another manner only such contracts and combinations are within this chapter as by reason of intent or the inherent nature of the contemplated acts, *prejudice*

⁵⁴See Hodges "The Anti-Trust Act and the Supreme Court," pp. 7-16, for historical background and development.

⁵⁵*Standard Oil Company v. U. S.*, 221 U. S. 1, 49-62, 31 S. Ct. 502, 513, 55 L. ed. 619; *U. S. v. American Tobacco Co.*, 221 U. S. 106, 179-180, 31 S. Ct. 632, 648-650, 55 L. ed. 663; *Nash v. U. S.*, 229 U. S. 373, 33 S. Ct. 780, 57 L. ed. 1232; *Sugar Institute v. U. S.*, 297 U. S. 553, 56 S. Ct. 629, 80 L. ed. 859; *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 60 S. Ct. 982, 84 L. ed. 1311.

the public interests by unduly restricting competition or unduly obstructing the course of trade.⁵⁶

It has been said that this "is merely another way of saying that the public rights must be violated before an offense is committed." (*Lynch v. Magnavox Co.* (C. C. A. Cal.), 94 Fed. (2d) 883.)

To hold that a program instituted by a sovereign state is a valid and reasonable exercise of its police power in preserving and protecting the public welfare in time of stress and that such program is at the same time so prejudicial to the public interests and so violative of those public rights as to subject that program to the inhibition of the Sherman Act as an unreasonable restraint is indeed paradoxical. Such a result cannot be squared with the oft quoted statement of former Mr. Chief Justice Hughes in the *Appalachian Coal* case⁵⁷ and with that of text writ-

⁵⁶*Nash, v. U. S.*, *supra*, U. S. p. 376, S. Ct. 781; *Appalachian Coals v. U. S.*, 288 U. S. 344, 360, 53 S. Ct. 471, 474, 77 L. ed. 825; *Apex Hosiery Co. v. Leader*, *supra*, U. S. p. 469, S. Ct. p. 982.

⁵⁷*Appalachian Coal v. United States*, 288 U. S. 344, 359-60, 53 S. Ct. 471, 474, 77 L. Ed. 825.

"The purpose of the Sherman Anti-Trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest, to afford protection from the subversive or coercive influences of monopolistic endeavor.

The restrictions the act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness. They call for vigilance in the detection and frustration of all efforts unduly to restrain the free course of interstate commerce, but they do not seek to establish a mere delusive liberty either by making impossible the normal and fair expansion of that commerce or the adoption of reasonable measures to protect it from injurious destructive practices and to promote competition upon a sound basis. The decisions establish that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

ers stressing the fact that contracts, combinations, or monopolies must actually prejudice the public interests before they can be said to come under the scope of the Sherman Act.

Toulmin, in his work on "Trade Agreements and the Anti-Trust Laws," at pages 100-101, in speaking of the "Rule of Reason," said;

"that rule was that you could not hold a combination illegal just because it restrained trade, because all combinations to a greater or less degree would do that. The real test was an economic one of whether the service rendered by the combination was greater or less than the disservice. If greater, then it was not an unreasonable restraint of trade because the balance in favor of the public was favorable." (*Buckeye Powder Company v. DuPont*, 248 U. S. 55, 39 S. Ct. 38, 57 L. Ed. 243; *United States v. United States Steel Corporation*, 251 U. S. 417, 40 S. Ct. 293, 64 L. Ed. 343; *United States v. United Shoe Machinery Company*, 247 U. S. 32, 38 S. Ct. 473, 62 L. Ed. 968.)

This Court in the *Nebbia* case⁵⁸ after remarking that "lawmaking bodies have in the past endeavored to promote free competition by laws aimed at trusts and monopolies" went on to thoroughly establish that:

"* * * Where the public interest was deemed to require the fixing of minimum prices, that expedient has been sustained. If the lawmaking body within its sphere of government concludes that the conditions or practices in an industry make unre-

⁵⁸*Nebbia v. New York*, 291 U. S. 502, 538; 54 S. Ct. 505, 516, 78 L. ed. 940 (1933).

stricted competition an inadequate safeguard of the consumer's interests, produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the Legislature to be fair to those engaged in the industry and to the consuming public."

We cannot close our eyes to the fact that the economic policy of government has undergone a decided change since the time when the Sherman Act was adopted. Absolute protection of competition, no matter to what extremes it was carried, is no longer the goal to be achieved. Cut-throat competition is an evil to be guarded against today. One of the hot beds of this evil lies in agriculture, where growers are forced to dump their crops on the market in a comparatively limited time and especially on a surfeited market. Competition between the growers in such instances almost inevitably results in ruinously depressed prices. This development of modern civilization has not served to outmode the Sherman Act. It still stands as a notable landmark of legislation, but its effectiveness is maintained through the "rule of reason". What might have been an unreasonable restraint in violation of the Act fifty years ago, today could well be held reasonable and not subject to the inhibition of the law.

Only recently, however, it was held that the elimination of so-called competitive evils is no legal justification for buying programs or price fixing agreements by private individuals. "For as we have seen price-fixing

combinations which lack Congressional sanction are illegal *per se*; they are not evaluated in terms of their purpose, aim or effect in the elimination of so-called competitive evils. Only in the event that they were, would such consideration have been relevant."⁵⁹

It is argued that this definitely marks the State Seasonal Raisin Program as illegal. We do not think this follows either legally or logically. In the first place the statute denounces "contracts", "combinations" and "conspiracies". These were all present in the *Socony-Vacuum* case, but the State Seasonal Raisin Program is neither a "contract", "combination" nor "conspiracy".

Fixing a price at which to sell one's own property is not unlawful. Only when this is done by means of contract, combination or conspiracy with some one else does the Sherman Act condemn it. The State program might well be distinguished from the *Socony-Vacuum* case on this ground.

Again, a price fixed by a State in the exercise of its police powers for the common good and to protect the public welfare must necessarily be viewed in a far different light than a combination of a few private individuals without the safeguards of governmental control and supervision.

The Solicitor General concedes that "the standard applicable to state action thus differs from that governing private conduct."⁶⁰ He admits that "a state conservation

⁵⁹*U. S. v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 228, 60 S. Ct. 811, 846, 84 L. ed. 1129 [1940].

⁶⁰Brief for the U. S., p. 64.

law clearly would not be deemed to violate the policy of the Sherman Act," but asserts that a private agreement for the same purpose "would be unlawful."⁴¹

This differentiation between governmental and private price fixing definitely appears in the field of public utilities (*Pennsylvania Gas Co. v. Public Service Comm.*, 252 U. S. 23, 40 S. Ct. 279, 64 L. ed. 434), and in the case of milk (*Milk Control Board v. Eisenberg Farm Products Co.*,⁴² *supra*), although unquestionably such fixing of prices by private agreement or combination for even a small amount of interstate commerce would violate the Sherman Act. In these instances the price fixing applied directly to sales made in interstate commerce and not, as here, to intrastate sales of a raw product with only a conjectured consequent effect upon the finished or processed commodity in interstate commerce.

These cases do clearly show that the *Socony-Vacuum* ruling is not applicable to government price fixing, either because a State is not subject to the Sherman Act, or be-

⁴¹*Ibid.*

⁴²*Milk Control Board v. Eisenberg Farm Products*, 306 U. S. 346, 59 S. Ct. 528, 83 L. ed. 752 [1939]. There, the Pennsylvania statute fixed a minimum price which must be paid by dealers to producers for fluid milk and required the latter to procure a state license and furnish a bond. A New York milk dealer purchased milk in Pennsylvania from the producers and within less than twenty-four hours the milk was shipped directly to New York. It was not processed and no change occurred in its constituent elements. There you have full state control of the entire milk supply, fixing of the price, and subjecting a direct sale of the milk in interstate commerce to such price regulation, as well as to a license and bond provision. As against that in the instant case, we have state control over the entire product and price control over 70% of the same, but such regulation applies only to the handling of the raw product in intrastate transactions. There, the court upheld the state regulation over the transaction in question.

cause State regulation is not a contract, combination, or conspiracy within the meaning of the law; or because the differentiation in the consideration of private as against governmental price fixing makes the former "unreasonable" and the latter "reasonable."

The Solicitor General agrees that Congress plainly did not regard State price-fixing laws as incompatible with the Sherman Act, although directly applicable to interstate sales. But he takes the position that the State raisin program is an exception because it "controls the supply and price of raisins throughout the nation."⁶³ Such program, he asserts, "is irreconcilable with the very essence of the Sherman Act, the preservation of commercial competition in interstate industries."⁶⁴

To support his stand his assertion, however, must be read: "the preservation of commercial competition" (at all costs or hazards). On the contrary, we believe it should read: "the preservation of (reasonable) commercial competition."

Admittedly such competition must be in interstate commerce. Despite the record in this case and the fact that the State raisin program is made to apply only to the raw raisin product before it is processed and enters interstate commerce, the Solicitor General assumes the complete control of the interstate movement in the finished raisin because of the control of the raw raisins.

Of course the possibility of such material effect upon or complete control of the interstate raisin market might

⁶³Brief of U. S., p. 64.

⁶⁴*Ibid* pp. 64-5.

have existed under certain conditions. But the record shows that it did not occur. And the program having terminated we know that such a possibility cannot materialize. Moreover, as this Court said in *Allen-Bradley Local 1111 v. Wisconsin etc., supra*, S. Ct. p. 824:

"We deal, however, not with theoretical disputes but with concrete and specific issues raised by actual cases. Constitutional questions are not to be dealt with abstractly. They will not be anticipated but will be dealt with only as they are appropriately raised upon a record before us. Nor will we assume in advance that a State will so construe its law as to bring it into conflict with the federal Constitution or an act of Congress."

To this there may well be added that neither will the Court assume in advance that a State will so administer its law.

Nor are the people or the nation left without a remedy in that eventuality. If the State sought to use this program, not as a necessary protection to the grower, but as an arbitrary club to *unduly* restrain the supply or to force exorbitant prices in interstate markets the action could be enjoined as a violation of the California Agricultural Prorate Act (Sec. 10) and as an arbitrary and unreasonable exercise of the police powers and violative of the state and federal Constitutions.

(b) Federal Legislation as Exempting State Program From Anti-Trust Laws.

The Federal anti-trust law itself provides (15 U. S. C. A. Sec. 17), that:

"Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of

labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit . . . nor shall such organization, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

The Agricultural Adjustment Act, as amended (7 U. S. C. A. Sec. 608b) after providing that the "Secretary of Agriculture shall have the power . . . to enter into marketing agreements with processors, producers, associations of producers, and others . . ." provides that "the making of any such agreement shall not be held to be in violation of any of the anti-trust laws of the United States, and any such agreement shall be deemed to be lawful: . . ." In addition it provides that "for the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under Section 605 of Title 15."

Under the first of such provisions the State program certainly was "instituted for the purposes of mutual help" and it does not have capital stock nor is it conducted for profit. If the State is to be construed as a person amenable to the Sherman Act, there is no good reason why its Department of Agriculture operating this State program should not be considered as such an "agricultural organization." Certainly it requires a considerable stretch of the imagination to believe that Congress deliberately intended to permit private parties to operate agricultural nonprofit organizations exempt from the provisions of the anti-trust laws and at the same time to deny a State the right to do the same in the exercise of its governmental powers.

Technically the action of the Secretary of Agriculture under the provisions of Section 10(i) of the Act (7 U. S. C. A. 610(i)) may not come within the expressed provisions of Section 8b of the Act as constituting entering into a market agreement, but it must be conceded that it comes squarely within the spirit of such provisions.

The Solicitor General argues that the decision in *United States v. Socony-Vacuum Oil Company*, *supra*, and *United States v. Borden Company*, 308 U. S. 188, 200, 60 S. Ct. 182, 189, 84 L. ed. 181, are authority to the effect that these provisions do not affect the State program here in question.

Neither of the provisions here under consideration was concerned in nor applicable to the *Socony-Vacuum* case. The most that that decision holds is that a conspiracy by private parties which is illegal *per se* does not obtain immunity from the Sherman Act because employees or officials of the government "may have known of those programs and winked at them or tacitly approved them."

In the *Borden* case there does not appear to have been any action by the Secretary of Agriculture or any express approval on his part which could possibly have been said to have constituted action under the provisions of the Agricultural Adjustment Act heretofore mentioned. The lower court held that by reason of such act the marketing of agricultural commodities included thereunder, and which included milk, were thereby entirely removed from the purview of the Sherman Act. It was in the

consideration of that decision of the lower court that this Court delineated the extent to which those sections of the Agricultural Adjustment Act, as amended, immunized contracts, combinations or conspiracies otherwise condemned by the Sherman Act. The language used is admittedly persuasive in support of the Solicitor General's stand, but we hesitate to believe that such language forecloses this Court from reaching the conclusion that the language expressed in such provisions shows an intent to exempt State action of the character here involved from the condemnation of the Sherman Act.

We cannot believe that Congress, after providing for cooperation and joint participation in such State programs, and after the Secretary of Agriculture together with other Federal officials provided for the institution of such a State program, jointly prepared and dictated its terms, supervised and participated in its administration, approved it in every respect as effectuating the Federal policy even to the extent of the written approval of the President of the United States, then intended to invalidate everything that was so done as being a violation of the Sherman Act.

At least, if such provisions do not specifically exempt the program here in question from the condemnation of the Sherman Act, in the language of Mr. Justice Frankfurter in *Georgia v. Evans, supra*, "reason balks" against holding that such program is an unreasonable restraint or monopoly and that it *unduly* restricts competition or

unduly obstructs commerce or in any manner prejudices the public interest.

Nothing in the Act, its history or its policy, could justify such a construction of the rule of reason. We are not here concerned with such programs, as are envisaged by counsel and by the majority of the lower court, in which the entire raisin crop might be withheld from the market for presumably exorbitant figures. It is not to be presumed that the State will so arbitrarily and unreasonably administer its laws, and such a problem can be met when and if it arises.

3. MAY THE CALIFORNIA RAISIN PROGRAM BE
ENJOINED IN THE PRESENT ACTION?

At the opening of the trial [R. 71] counsel for plaintiff stated that:

"It is agreed, so far as the plaintiff is concerned, that the case be submitted upon the constitutionality of the program, as implementing the Prorate Act; that the act itself is not here attacked."

The case was tried upon that theory. Nowhere throughout the record, nor in the proceedings in any manner whatsoever, is any attack made upon the validity of the statute, itself, nor is the same questioned. Nowhere throughout the trial is any attack made or any evidence offered pertaining to the Sherman Act. Neither in the Findings [R. 51] nor in the Judgment [R. 61] is there any mention of the Sherman Act, nor to any part or portion of Title 15, Sections 1 to 33, U. S. C. A.

The specific reason stated in the judgment for the issuance of a permanent injunction [R. 63] "is that said program violates Article I, Section 8 of the Constitution of the United States."

Prior to the enactment of the Clayton Act in 1914 no action could be maintained for injunction under the Sherman Anti-trust Act except by the United States (*Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 41 S. Ct. 172, 65 L. Ed. 349; *General Investment Co. v. Lakeshore Railroad Co.*, 260 U. S. 261, 43 S. Ct. 106, 67 L. Ed. 244).

The right to injunction given to the United States upon mere violation of the Act was not extended, however, to private parties under the Clayton Act amendment. (15 U. S. C. A. 26.) This right to injunction extended to "persons" by the Clayton Act is given only "when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity."⁶⁵

Admittedly the theory upon which this action was framed, tried, and decided in the lower court was that the seasonal program for raisins constituted a violation of the Federal commerce clause.

⁶⁵*Duplex Printing Press Co. v. Deering*, *supra*; *Central Transfer Co. v. Terminal Railroad Assn.*, 288 U. S. 469, 53 S. Ct. 444, 77 L. Ed. 899; *Bedford Cutstone Co. v. Journeymen Stone Cutting Assn.*, 274 U. S. 37, 47 S. Ct. 522, 71 L. Ed. 916; *Anderson v. Shipowners Assn.*, 72 U. S. 359, 47 S. Ct. 125, 71 L. Ed. 298; *Geddes v. Anaconda Copper Mining Co.*, 254 U. S. 590, 41 S. Ct. 209, 65 L. Ed. 425.

Nowhere in the record is there any allegation, evidence, or finding of any contract, combination or conspiracy in restraint of trade or commerce.

Outside of the formal allegation in Paragraph I of the amended complaint [R. 1] that the action arises under the Constitution of the United States and under Title 15, Sections 1 to 33 of the United States Code, the only allegation that can possibly bear upon the Sherman Act is found in Paragraph XII [R. 5] where it is alleged upon information and belief that some 100,000 tons of raisins had been delivered to defendant Zone under said program, and upon information and belief it is alleged that the defendants are now and intend to continue withholding said raisins from interstate commerce in restraint of trade and for the purpose of maintaining the monopoly prices.

The only allegation of irreparable damage is the bare statement of that conclusion in Paragraph VII of the complaint [R. 4] "that unless said program is quickly declared unconstitutional, plaintiff and all the growers in said Zone will be irreparably damaged by the loss of such market."

The only other mention of damages is found in Paragraph VI of the amended complaint [R. 3] where it is alleged that plaintiff contracted to sell raisins in interstate commerce, and if such program is enforced he will be unable to procure the necessary raisins to fulfill his contracts and will be subjected to liability thereby in approxi-

mately the sum of \$8000.00, and will also lose an estimated profit on 2500 tons of raisins of from \$5.00 to \$12.00 per ton. At the trial plaintiff fell far short of proving even his meager allegations of damage. He failed to produce evidence of a single contract or sale in interstate commerce. The nearest he came to interstate commerce was when several months after he had contracted to deliver raisins intrastate to certain buyers he was authorized as the agent of some of these buyers and at their expense to deliver a portion of the raisins which they had purchased from him to shipping points for transportation out of the State.

"A bill of complaint so uncertain in aim and so meager in particulars falls short of the standard of candor and precision set up by our decisions" to warrant the equitable relief of injunction. (*Hegeman Farms Corp. v. Baldwin*, 293 U. S. 163, 170, 55 S. Ct. 7, 9, 79 L. Ed. 259; *California v. Latimer*, 306 U. S. 255, 59 S. Ct. 166, 83 L. Ed. 159) Equity will take jurisdiction to grant injunctive relief only when such intervention is essential to protect property or other rights against irreparable injuries, which cannot be adequately remedied in any other manner. (*United Fuel Gas Co. v. Railroad Commission*, 278 U. S. 300, 49 S. Ct. 150, 73 L. Ed. 390; *Johnson v. Haydel*, 278 U. S. 16, 49 S. Ct. 6, 73 L. Ed. 155; *Massachusetts State Grange v. Benton*, 272 U. S. 525, 47 S. Ct. 189, 71 L. Ed. 387.)

III.

The California Raisin Program and the Federal Commerce Clause.

This question was not included in the Court's suggestion for reargument, presumably because it had been considered in the briefs originally filed by the parties to the appeal. However, the Solicitor General has furnished us with proof sheets of his brief on behalf of the United States in which he undertakes to discuss this question and to add considerable to what appears in the original briefs of the parties hereto. We are taking the liberty of replying to this as briefly as possible and without reiterating, so far as we can avoid it, any matters appearing in our original brief.

The Solicitor General stresses matters of "local concern" as opposed to matters of "national importance" and cites *California v. Thompson*, 313 U. S. 109, 113, and *Duckworth v. Arkansas*, 314 U. S. 390, 394. Undoubtedly this is one of the criteria often used in the discussion of this question. The difficulty immediately arises in determining what subjects of regulation are of national importance and which are of local concern. He quotes from the dissenting opinion in *Di Santo v. Pennsylvania*, 273 U. S. 34, 44, to the effect that it is necessary to take into account "all the facts and circumstances, such as the nature of the regulation, its function, the character of the business involved and the actual effect on the flow of commerce." (Brief of U. S. pp. 77-8.)

The nature of the present regulation under consideration and its function are to regulate the movement of a raw

crop into the hands of the processor for the purpose of saving the grower from the disastrous consequences of unrestricted dumping of his product. There has been no actual effect on the flow of interstate commerce whatsoever. So far as the interstate flow is concerned, the record is devoid of evidence of any effect. It does affirmatively show that the packers or processors at all times had more than an abundance of raisins to meet their interstate demands. Actual shipping records bear out the fact that there was absolutely no effect upon this flow of interstate commerce. Tables 13 and 14 in Appendix B show that the consumer has not been affected at all and this apparently is the chief worry of the Solicitor General in connection with this program.

Production, mining, manufacture, and handling of raw products prior to any movement in interstate commerce are, as stated in *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, supra*, "traditionally local matters" over which a state has always exercised its historic power; and when Congress exercises its commerce powers over such matters it constitutes an invasion by Congress of the State's local field and does not transform such functions into interstate matters. They still remain local. *National Labor Relations Board v. Jones & Laughlin Steel Co., supra*; *U. S. v. Darby, supra*. (Appellant's original brief, pp. 30, 31.)

The fact that any part, the bulk, or even all of a commodity ultimately moves in interstate commerce, and that such commodity was manufactured or produced with that knowledge and intent, does not render invalid State regulation attaching prior to the commencement of its actual movement in such interstate commerce, or transform the

local functions attaching to such commodity into interstate activities.⁶⁶

The distinction drawn between matters of "local" concern and those of "national" importance are applied when dealing with regulations impinging upon interstate commerce at some point between the inception and destination of the interstate journey.

The *Duckworth* case is an apt illustration of this. That case involved the transportation of a truck load of liquor from Illinois to Mississippi through Arkansas. An Arkansas statute makes it unlawful to ship liquor into the state without a permit. This was, of course, a regulation applying directly to interstate commerce. It was in discussing this type of State regulation that the terms "local" and "national concern" were used. The Court enumerated various examples of this character of legislation by the States such as quarantine laws, transportation of diseased animals, harbor and navigable water regulations, policing of motor caravans, etc.

This in reality presents an "invasion" by the State into a strictly federal field. Such cases involve the doctrine that the commerce clause has never been deemed to exclude the states from regulating matters primarily of what is termed "local concern" with respect to which Congress has not exercised its commerce power. The actual benefits accru-

⁶⁶Bulk of oranges: *Sligh v. Kirkwood*, 237 U. S. 52, 35 S. Ct. 501, 59 L. ed. 835 [1915]; 95% of Lumber: *Arkadelphia Milling Co. v. St. Louis Ry. Co.*, 249 U. S. 134, 150-2, 39 S. Ct. 237, 63 L. ed. 517 [1919]; 80% anthracite coal: *Heisler v. Thomas Colliery Co.*, 260 U. S. 245, 43 S. Ct. 83, 67 L. ed. 237 [1922]; 100% tobacco: *Townsend v. Yeomans*, 301 U. S. 441, 452, 57 S. Ct. 842, 847, 81 L. ed. 1210 [1937].

ing to the local community are considered to far outweigh any detriment to interstate commerce.

The State in those instances is acting on sufferance of the federal power. That presents a far different question from where the State legislates in regard to that same liquor when it is in the State prior to, or after the ending of, its interstate journey. The raisin program is an instance of the latter type. Much confusion has arisen in the failure to keep this distinction in mind when considering the commerce clause.

The Solicitor General states that in his opinion that "if anything is of national commercial importance, the supply and price level of a commodity moving in interstate commerce falls in that category" (Brief of U. S. p. 80).

If by that he means that exclusive federal power attaches to an entire commodity at all times provided any part of it moves in interstate commerce, then the states are practically eliminated from governmental functions, for in this day and age practically all commodities move in interstate commerce in varying degrees. Even if he applies it only to those commodities, the great bulk of which move in interstate commerce and are grown or produced for that purpose, he would withdraw from state jurisdiction, as said in the *Heisler* case, the fruits of California, the wheat of the West, the cotton of the South, etc. As there stated: "The reach and consequences of the contention repels its acceptance." And if we confine withdrawal of State jurisdiction to instances involving only supply and price level, we have not altered in any degree "the reach and consequences" of such contention.

—He argues that because of the quantity of raisins moving interstate the burden of the regulation falls upon interstate commerce. Probably just as large a proportion of the cotton of Mississippi is shipped out of that state and a tax upon the buying and selling of that cotton falls just as heavily upon interstate commerce. However, the tax was upheld, the Court saying:

"Ginning cotton, transporting it to Greenwood, and warehousing, buying, and compressing it there, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce. But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce". *Chassaniol v. City of Greenwood*, 291 U. S. 584, 54 S. Ct. 541, 78 L. ed. 1004 (1934).

The Solicitor General urges that because the raw raisin crop is purchased by the packers for eventual interstate shipment (not necessarily by such packers), such sale is in, or in the current of, interstate shipment (Brief of U. S. p. 84). He quotes the statement from *U. S. v. Rock Royal Co-op.*, 307 U. S. 533, 568-9, that "where commodities are bought for use beyond state lines, the sale is a part of interstate commerce." That referred to milk purchased from the farmer for shipment out of the State and immediately shipped out in that same form. It is merely an instance of the ordinary sale and shipment of an article in interstate commerce in which the sale is a part of that commerce.

That is not to be compared with the purchase by the packer of the raw raisins and then, after processing them, selling some of the finished raisin product for shipment

forthwith out of the State. The latter sale is the one that is a part of interstate commerce. That the production, delivery, and handling of the raw material going into a finished product that moved interstate thereby became a part or flow of that commerce was urged by the government in support of its position in the first of the *National Labor Relations Board* cases. The Court, however, rejected that contention and maintained the well established rule that interstate commerce, itself, actually begins and ends with the inception and completion of the interstate journey. Instead it based its ruling upon the ground that the commerce power is not confined to the interstate movement or flow of commerce but may be exerted over wholly intra-state matters when necessary to protect the commerce power. *National Labor Relations Board v. Jones & Laughlin Steel Co.*, *supra*.

The Solicitor General stresses the fact that California has a practical monopoly on the production of raisins in the United States. He urges that this in itself makes it a matter of "national importance" and puts it from vine to finished product exclusively under the federal commerce power. We might reply that the interstate movement of cotton, wheat, iron ore, etc., is of far more national concern than whether a single pound of raisins ever moved interstate. If the importance of moving a commodity interstate removes it entirely from under State control then indeed the states would, as has been said by this Court, become mere geographical subdivisions of the federal government.

However, the same contention as to monopoly is fully answered in *Heisler v. Thomas Colliery Co.*, *supra*. There, Pennsylvania had the same monopoly of anthracite coal

that California has of raisins. There, it was likewise urged that the burden of the state regulation (tax) was borne by the consumers in other states and the Governor of the state was quoted as urging the tax because of that effect. That case stands in the same relation also as to the Sherman Act that the raisin program does. The Court upheld the State Act as not being in violation of the commerce clause, but apparently no one even thought that the Sherman Act had any application.

Buck v. Kuykendall, 267 U. S. 307, and *Bradley v. Public Utilities Comm.*, 289 U. S. 92, are cited as limiting the power of states to regulate "competitive features of interstate commerce." (Brief of U. S. p. 88.) Both cases refer to denial of permits to operate motor routes in interstate commerce. The first case involved a route from Seattle, Washington, to Portland, Oregon, the second involved a route from Cleveland, Ohio, to Flint, Michigan. These cases are another instance of state regulation applied directly to interstate commerce. (*Supra*, pp. 24-6, 52.) Denial of a permit in the first case was upon the ground that the route from Seattle to Portland was already adequately served. This was a direct exercise of interstate commerce upon interstate commerce grounds. This as the Court said, was direct obstruction of interstate commerce. In the second case the permit was denied upon the ground that the particular route designated was already so congested that to add more traffic was a hazard and dangerous to travel. This was sustained upon the ground that safety to travel was more important than abstract interference.

with interstate commerce. In fact interstate commerce was protected rather than obstructed by the denial of the permit.

The raisin program, however, did not deal with interstate commerce. It did not prevent competition in interstate commerce. The packers, jobbers, wholesalers, dealers, and all others engaged in interstate commerce in raisins were in precisely the same competitive condition as before and after the operation of the program.

The concern of the Solicitor General is not over any *actual* effect upon interstate commerce, for the 1940-41 Seasonal Marketing Program for Raisins has come and gone and not the slightest effect upon interstate commerce has been shown or can be shown, unless elimination of inferior raisins has created a better feeling among consumers and a consequent increase in demand because of confidence in obtaining a better article. This may have occurred. We do not know whether the program was in force long enough to have this effect or not. Experience proves that such effect will follow in the long run.

His concern is not even over the possibilities of the 1940-41 program for it was definitely limited to 70% of pooled raisins. And prices were definitely in the hands of the Federal officials. He stresses the effect of a hypothetical program embracing 100% of the raisins and forcing the rest of the Nation to its knees to pay tribute to California producers in the form of exorbitant prices.

It is not to be assumed that any State will so abuse its sovereign powers. Should such occasion ever arise it will be adequately dealt with. It would be an unlawful, arbitrary and unreasonable exercise of the police powers. And any such vicious and actual obstruction of interstate commerce would indeed be in violation of the commerce clause.

But this case does not present any such situation. It presents a regulation worked out in co-operation between federal and state authorities, having the express approval of high officials of the State and Nation, jointly administered by those officials, and carrying out an economic policy decreed by both the state and national governments.

It has had no actual effect upon interstate commerce, either directly or indirectly. It has been the means of affording relief and a degree of protection to a local industry within the State. It has been the means of affording at least a living return to the raisin growers of the State and doing so without increasing the burden upon any consumers elsewhere.

All this is now sought to be annulled and invalidated upon the grounds of a fanciful threat to interstate commerce by a packer handling less than 1% of the raisins, claiming to be engaged in interstate commerce, but, when challenged, failing to produce tangible evidence of a single interstate transaction; and with absolutely nothing to show any irreparable damage. He sold short in the summer before the 1940 raisin crop matured and if the raisin program served to steady the market for the grower then he lost a few dollars in fulfilling his *intrastate* contracts.

Conclusion.

In accordance with what we have said we believe that the California 1940-41 Seasonal Marketing Program for Raisins was not in conflict with the Agricultural Adjustment Act, as amended, nor with the Sherman Act; nor was it invalid under the federal commerce power; and that the judgment of the lower court enjoining its enforcement as being violative of such commerce clause should be reversed.

Respectfully submitted,

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STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE
SACRAMENTO

AGRICULTURAL PRORATE ACT



REVISED TO SEPTEMBER 13, 1941



AGRICULTURAL PRORATE ACT*

An act to conserve the agricultural wealth of the State of California, and to prevent economic waste in the marketing of agricultural products or crops produced in the State of California, creating an Agricultural Prorate Advisory Commission; providing for the appointment of members of said commission, fixing the term of office of the members of said commission; prescribing the powers, duties and authority of the Director of Agriculture under this act and of said commission and the members thereof; providing for the institution of proration programs with respect to agricultural products or crops; providing for the enforcement of such programs; providing penalties for violation of such programs; providing for the creation of funds for the purposes of said act and providing for the collection thereof; and making an appropriation therefor.
(Title amended by Ch. 894, Stats. 1939.)

(* The original act is Chapter 754, Statutes of 1933, approved June 5, 1933. It was amended by Chapter 471, Statutes of 1935, approved July 15, 1935, and Chapter 743, Statutes of 1935, approved July 20, 1935. It was further amended by Chapter 6, Extra Session 1938, approved March 29, 1938. Also amended by Chaps. 894, 363, and 548, Stats. 1939 and by Chaps. 603, 1150 and 1186, Stats. 1941.)

The people of the State of California do enact as follows:

SECTION 1. The unreasonable waste of agricultural wealth occasioned by the harvesting, preparation for market and delivery to market of greater quantities of agricultural commodities than are reasonably necessary to supply the demands of the market is opposed to the public interest and the difficulty inherent in any attempt by individuals to correlate within a reasonable degree the supply of any agricultural commodity to current consumptive demands is creating chaotic economic conditions in certain agricultural areas of the State of such severity as to imperil the ability of agricultural producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase and increasing the tax burdens of other citizens for the same purposes. In the interest of the public welfare and general prosperity of the State, the unnecessary and unreasonable waste of agricultural wealth, hereinafter referred to as "agricultural waste," involved in the harvesting or preparation for and delivery to market of agricultural commodities for which there exists only a limited consumer demand should be eliminated while at the same time preserving to all agricultural producers an equality of opportunity in the available markets.

(Amended by Ch. 471, Stats. 1935.)

SEC. 2. As used in this act:

(a) The term "person" includes any individual, firm, association or corporation.

Preamble
and
purposes

Definitions

(b) The term "agricultural waste," in addition to its ordinary meaning, shall include economic waste, and waste incident to the harvesting and/or preparation for any delivery to market of agricultural commodities in excess of reasonable market demands.

(c) The terms "product," "crop" or "commodity" mean any horticultural, viticultural, or vegetable product of the soil, live stock and live stock products and poultry and poultry products, but shall not include milk or milk products.

(d) The terms "proration zone" or "zone" mean any district or districts with respect to which a program of market proration is proposed to be or has been instituted.

(e) The term "commission" means the Agricultural Prorate Advisory Commission unless otherwise indicated by the context.

(f) The term "producer" means any person engaged in the business of growing or producing any agricultural product for commercial use to the extent of at least one producing factor as hereinafter defined.

(g) The term "distributor" means any person, other than a retailer, who acquires and distributes any product at wholesale or retail.

(h) The term "retailer" means any person engaged in the business of making sales exclusively at retail.

(i) The term "handler" means any person receiving agricultural commodities from the producer for the purpose of marketing the same.

(j) The phrase "primary channel of trade" shall mean that transaction in which the producer or his cooperative marketing association loses physical possession of the commodity through the sale thereof or other disposition commercially.

(k) The term "producing factor" means the unit of one acre in commercial production, or such other unit as the commission shall specify, in the event that it finds that more than one acre or a fractional part of an acre, or some other unit of commercial production, is required to assure reasonable control of the commodity. In the case of a proration marketing program for live stock or live stock products or for poultry or poultry products, the producing factor shall be specified in the proration marketing program.

(l) The term "owner" means the producer in possession of agricultural commodities and legally entitled to dispose of the same for marketing purposes.

(m) The term "proration" means the uniform percentage of their total production which all producers may harvest and prepare for market and/or market during specified proration periods.

(n) The term "dealer" means any distributor or retailer.

(o) The term "processor" means any person who buys, or otherwise takes title to or possession of, farm products for

the purpose of processing or manufacturing the same or selling, reselling or redelivering the same in dried, canned, extracted, fermented, distilled, or other preserved form, and shall include (1) any person or exchange conducting such business and (2) any person or exchange buying farm products from the producer thereof for the purpose of reselling them to any person or exchange conducting such business.

(p) The term "production" means the total crop of an agricultural commodity of a producer as defined in this section.

(q) The term "director" means the Director of Agriculture of the State of California, and, unless the context otherwise requires, includes any authorized agent of the director.

(r) The singular includes the plural.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938, approved March 29, 1938, and in effect immediately; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 3. The Agricultural Prorate Commission is hereby abolished. The Agricultural Prorate Advisory Commission, consisting of nine members is hereby created. Eight of the members shall be appointed by the Governor in the manner and for the terms hereinafter set forth. The Director of Agriculture shall be ex officio the ninth member. Six of the appointive members of said commission shall be engaged at the time of their appointment in the production of agricultural commodities as their principal occupation, but no two of these shall be appointed as representing the same commodity. One of said appointive members shall be neither a producer nor a handler of agricultural commodities but shall be appointed to represent consumers generally. One appointive member shall be an experienced commercial handler of agricultural products. The terms of office of the members except the director shall be four years and they shall hold office until the appointment and qualification of their successors, except that the terms of office of the said members first appointed shall be fixed by the Governor so that the terms shall expire as follows: Two members, January 1, 1940, two members, January 1, 1941, two members, January 1, 1942, and two members, January 1, 1943.

Advisory
Commission

The members who have been serving as members of the Agricultural Prorate Commission shall serve as members of the Agricultural Prorate Advisory Commission until the appointment of all of the members of the Agricultural Prorate Advisory Commission as provided in this section. Vacancies shall be filled by appointment for the unexpired term.

All such appointments shall be by and with the consent of the Senate, but shall be valid to all intents and purposes, subject, however, to the consent of the Senate at its next regular session, and until such time, the person so appointed shall have as full and ample authority as though confirmed by the Senate. In case the Senate, during its session, fails to act or

refuses its consent to any such appointment, the Governor may, after adjournment of the Senate, appoint some other person, which appointment shall be valid to all intents and purposes, subject, however, to the consent of the Senate at its next regular session, and until such time the person or persons so appointed shall have as full authority and power as though confirmed by the Senate.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Organization
of com-
mission

SEC. 4. Within 30 days after notice of his appointment each member shall qualify by taking the oath of office and filing the same with the Secretary of State in accordance with law. Within five days after all of said members shall have qualified, they shall organize and elect a president from among their number. The commission shall adopt the general policies as to its activities under this act and may from time to time adopt such rules and regulations as it deems necessary in connection therewith. The director, with the consent of the commission, shall appoint a secretary for the commission, which secretary shall also serve as executive assistant to the director in the administration of the provisions of this act.

The director may appoint an attorney and shall provide for such other personnel as may be necessary and shall prescribe their duties. In carrying out his duties under this act, the director is hereby authorized to utilize the facilities and personnel of the State and county Departments of agriculture. The members of said commission shall receive ten dollars (\$10) per day for each day they are actually engaged on official business and shall be reimbursed for their actual traveling expenses.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Office of
commission

SEC. 5. The office of the commission shall be in the City of Sacramento and it may meet at such times and in such places as may be expedient and necessary for the proper performance of its duties; provided, however, said commission shall meet at least once every 90 days and the failure of any member to attend three consecutive meetings shall be just cause for his removal from said commission. No member or employee of the commission or member of the program committee or the zone agent shall unduly influence producers in their choice either for or against the institution of an agricultural pro-rated marketing program or for or against the termination of such a program. At all meetings of the commission a majority of the commission shall constitute a quorum.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Rules and
regulations

SEC. 6. For the purpose of administering and enforcing the provisions of this act, the director is authorized to adopt such necessary rules and regulations as he may from time to time deem advisable and shall conduct any hearing, inquiry or investigation which the director has power to undertake

or hold. In the conduct of any such hearing, inquiry or investigation the director shall have power to administer oaths, and issue subpoenas for the attendance of witnesses and the production of papers, books, maps, accounts, documents and testimony in any inquiry, investigation or hearing ordered or undertaken in any part of the State.

The director may conduct hearings and investigations on behalf of the commission and in that capacity shall have all of the authority granted him in the preceding paragraph.

At each hearing held in accordance with the provisions of this act at least one member of the commission must be present. The superior court of the county or city and county in which any such inquiry, investigation or hearing may be held shall have power to compel the attendance of witnesses and to require the disclosure by such witnesses of all facts known to them, relative to the matters under investigation, and the production of papers, maps, books, accounts, documents and testimony as required by any subpoenas issued by the director. All parties disobeying the orders or subpoenas issued under the authority of the director shall be guilty of contempt and shall be certified to the superior court of the county in which said contempt occurs, which court shall punish such contempt.

Advisory
Commission
hearings

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 7. A full and accurate record of business or acts performed or of testimony taken in pursuance of the provisions of this act shall be kept and be placed on file in the office of the director, which records shall at all times be open to any interested person.

Records

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 8. An agricultural prorated marketing program may be instituted for a variety or kind of agricultural commodity and may be based either upon a production zone or upon a market zone, the basis to be specified in the petition therefor.

Establish-
ment of pro-
ration zone

Ten or more producers of the variety or kind of the commodity proposed to be affected may file with the commission a petition for the establishment of a proration zone and such prorated marketing program.

The commission within its discretion may decline to initiate or act upon any such petition if it determines and is satisfied that said petition has not been presented within a time reasonably in advance of the harvesting of the crop or commodity sought to be prorated so as to permit the formulation and establishment of a sound and effective program and which will effectuate the purposes of this act.

The said petition shall, among other things, contain:

(1) A description of the district or districts comprising the zone upon which the proposed marketing program is to be based.

(2) A general statement of facts showing the necessity for the institution of a prorated marketing program.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session, 1938; Ch. 894, Stats. 1939.)

Canning figs
exempted

SEC. 8.1. By reason of the climatic and other conditions relating to the production and marketing of figs for canning purposes no proration program under this act shall be established for figs for canning purposes. Any such program now in existence shall be forthwith terminated and no further proceedings shall be had thereunder except proceedings relating to such termination.

(Added by Ch. 894, Stats. 1939.)

Grapes in
certain
counties
exempted

SEC. 8.5. By reason of the climatic conditions and other factors relating to the production of grapes therein no proration program shall be applicable as to grapes in Sonoma, Napa, Mendocino, Lake, Santa Clara, Santa Cruz, Alameda, San Benito, Solano, San Luis Obispo, Contra Costa, Monterey, and Marin counties, or any of them.

The provisions of this section shall not affect the validity of the organization or existence of any proration zone or any proration program applicable to grapes except as to the counties herein named.

(Added by Ch. 363, Stats. 1939.)

Hearings
upon peti-
tion for zone

SEC. 9. Upon the receipt of a petition for the establishment of a prorate program, the director, on behalf of the commission, shall hold a hearing at some central point located within the area described in said petition and proposed to be established as a proration zone.

If the director so requires, there shall be filed with the petition a good and sufficient undertaking, approved by the director to cover the probable cost of conducting the hearing and instituting the prorated marketing program.

Notice of such hearing shall be given at least ten (10) days prior thereto by publication in a newspaper of general circulation printed and published in each county affected and by posting in at least ten (10) conspicuous places in said area. If no paper is published in such area, then said notice shall be published in such paper as is published in the county or has general circulation in such area. In case the proposed proration zone includes more than one area the required notice shall be given in each area and the director shall hold hearings in each. At said hearings the director shall receive and hear the evidence offered by the petitioners in support of the petition and by any interested person in support of or in opposition thereto. All testimony at such hearings shall be under oath.

All evidence and exhibits and all facts and data used directly or indirectly by the director, or introduced at a hearing, shall within a reasonable time after being so used

or so introduced be available at the office of the commission to all interested parties.

Said hearings may be adjourned from time to time and from place to place as the circumstances may require. For the purpose of procuring additional evidence, facts, and data, petitioners or opponents shall, upon proper motion, be granted a continuation of any hearing by the director for a period not exceeding five days. A transcript of the proceedings at all such hearings shall be made by the director and shall be open to inspection by any interested party.

(Amended by Ch. 471, Stats. 1935; Ch. 8, Extra Session 1938; Ch. 894, Stats. 1939.)

SEC. 10. If from the evidence and data developed at said hearings it shall be found by the commission that the following facts actually exist:

Economic
findings by
commission

(1) That the petition is signed in person or by authorized representatives by the required number of producers; and

(2) That the economic stability of the agricultural industry concerned is being imperiled by market conditions prevailing or liable to prevail as to the variety or kind of commodity sought to be prorated or is being imperiled by the existence or imminence of a seasonal or annual surplus; and

(3) That agricultural waste is occurring or is about to occur; and

(4) That the institution of a program of prorated marketing will conserve the agricultural wealth of the State and will prevent threatened economic waste; and

(5) That the institution of a proration program will advance the public welfare without discrimination against any producer; and

(6) That the institution and operation of a proration program will not result in unreasonable profits to the producers and that the commodity named in the petition can not be marketed at a reasonable profit to producers otherwise than by means of such a program; and

(7) That the proposed zone of proration includes all of the territory within this State reasonably necessary to carry out the purposes and attain the objectives of this act;

Then, in that event, the commission shall make written findings to that effect.

If in the case of any petition it shall appear that the inclusion of territory additional to that described in the petition is necessary to the program, the director shall postpone further proceedings until notice shall have been given to the producers within such additional territory in the manner provided for in Section 9 hereof. Thereafter said petition may be amended to include such additional territory and the director may complete said hearing in the manner hereinbefore provided.

All evidence and data developed at any hearings held pursuant to this act shall be for the consideration of the commission. The commission shall review the evidence and data developed as a result of the hearings and shall make written findings and shall grant or deny the petition in accordance with the facts so presented.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Producers
lists

SEC. 11. If the commission finds in favor of the petition, the director shall require the county agricultural commissioner of each county in which any part of the proposed zone lies to prepare a list of the producers of the commodity in that part of the zone lying in his county, together with the producing factors represented by each of such producers. Each such county agricultural commissioner shall within twenty (20) days prepare such list which shall show the names and addresses of the producers and the producing factors belonging to or controlled by each producer, and upon its completion shall transmit such list to the commission and also shall thereupon post a copy of said list in his office for examination by all interested parties.

The director may require lists of producers within the proposed proration zone from distributors or handlers of the variety or kind of commodity for which a proration program is proposed and from such other source as may be deemed necessary or advisable and may correct the commissioner's list or lists therefrom after comparison.

The director shall notify all producers in each proration zone whose names appear on such lists that an agricultural prorate program is proposed for the commodity to be affected and that the producer is credited with the number of producing factors established by said lists.

Such lists or corrected lists shall be available for inspection in the office of the director to any producer directly affected by the program.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 12. (Repealed by Chapter 894, Statutes 1939.)

SEC. 13. (Repealed by Chapter 894, Statutes 1939.)

Correction
to
lists

SEC. 14. Any producer whose name does not appear on the proper list and any producer claiming an erroneous allotment of producing factors may make application to the agricultural commissioner to be placed on said list, or to be credited with the proper number of producing factors, as the case may be, and upon substantiating his claim, is entitled to have the error corrected. Such application must be made to the agricultural commissioner within 15 days after the lists of names herein described and provided are posted in the office of the agricultural commissioner of the county as

provided in Section 11 hereof. In the event that any such producer shall be dissatisfied with the final action of the agricultural commissioner in that regard, he may, within ten (10) days after notice of such final action by the agricultural commissioner, appeal to the director, whose findings shall be final.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 15. After the approval of the petition by the commission, the director shall divide the proposed zone into as many districts not exceeding seven as may appear convenient or necessary, and allot to each district the number of producers therefrom who may serve upon a program committee. The director shall thereupon call a meeting of producers in each district at which the producers shall elect persons eligible to serve upon a program committee. Such election shall be by secret ballot after nomination from the floor. Not less than three eligible persons shall be elected for each producer member of the program committee allotted to the district. At such election each producer in attendance shall be entitled to one vote, and voting by proxy shall not be permitted. All eligible persons elected in each district shall be producers within said district. In the event a corporation or a partnership is a producer, it may designate a representative who may be a nominee. From the eligible lists of producers elected in such districts, the director shall, subject to the approval of the commission, select and appoint not less than five and not more than seven members to serve on the program committee. For each member the director shall appoint an alternate. Each district in the zone or area shall be entitled to at least one member and one alternate member on said committee. The director may also, if requested by the program committee and approved by the commission, appoint on said committee in addition to the producer members, not more than two handler members and corresponding alternates who are handlers of the commodity affected by the proration program in the proposed zone.

Election of
program
committee
members

The persons so appointed by the director as the program committee shall formulate a proration marketing program which shall be submitted to the commission. The commission after a hearing or hearings on the proposed program held within the zone shall make written findings as to whether the program is reasonably calculated to carry out the objectives of this act and based upon said findings shall approve or disapprove the program, or may modify it and approve it as modified. If the producing factor is to be determined by the commission such determination shall be made and shall become a part of the program. The commission shall fix a date prior to which the program, in order to become effective, must be consented to by producers as provided in this act.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Assent of
producers

SEC. 16. If the program is approved by the commission, the director shall submit a copy of the program in full together with an explanation of the provisions of such program and the reasons therefor to each of the producers of the commodity or their duly authorized agent to be affected within the proposed zone as shown by the lists of producers compiled in accordance with the provisions of this act, accompanied by a printed, typewritten or mimeographed form upon which the producer can record his assent to the program and by a notice of the date prior to which the written assent of the producer to the program must be delivered to the office of the director at Sacramento. A nonprofit cooperative association may assent on behalf of any of its members only if

Assent of
cooperative
association

authorized so to do by an instrument in writing signed by the member; provided, that such authority may be revoked as to him by any such member by an instrument in writing filed with the director and with such association, which revocation shall become effective three (3) days after its receipt by the director. A copy of any written authorization of a producer to the nonprofit cooperative association of which he is a member shall be forwarded to the director by the association and likewise a copy of any revocation of such authority. No person, firm, or corporation, other than a nonprofit cooperative association, shall be permitted to consent for a number of producers in excess of thirty per cent (30%) of the producers to be affected, regardless of the manner in which the authority to consent is shown. On or after the date fixed, the director shall canvass the results and if he finds that 65 per cent or more of the producers in the proposed zone and the owners of 51 per cent or more of the producing factors have assented in writing to the proposed program, the director shall declare the program instituted. In any order instituting a proration program the zone affected shall be given some title indicative of the commodity affected.

Percentage
required

Each such zone shall constitute a separate public corporate entity and its affairs shall be managed by a program committee appointed as herein provided.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Review of
orders within
30 days

SEC. 17. Any order of the director instituting a proration program and any other order of the commission or director substantially affecting the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action must be commenced within 30 days after the effective date of the order complained of.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Term of
office

SEC. 18. In the event of the institution of a marketing program in a proration zone, the committee chosen under Section 15 shall be the proration program committee. The members of said committee shall serve for two years. The marketing program may, however, fix the date upon which

the two-year term of program committee members will terminate. The members of such program committee shall be entitled to compensation at the rate of ten dollars (\$10) each for each day while engaged on official business; provided, that such compensation shall not be paid for more than five days in any month unless approved by the director, and members shall be reimbursed for their necessary traveling expenses. Per diem

The director shall appoint in the same manner as the program committee was appointed an alternate for each member of the committee. It shall be the duty of such alternate to sit as a regular member of the committee in case the member for whom he is an alternate fails for any reason to attend any meeting of the committee, and he shall be compensated and reimbursed for his necessary traveling expenses in the same manner and to the same extent as a regular member when so serving. Alternate

Vacancies on the program committee occasioned by the expiration of term, death, or resignation of any member, or by removal for incompetence or inattention or neglect of duties as a member of the program committee by the director, with the approval of the commission, or by a member ceasing to qualify as a producer or handler of the commodity concerned, shall be filled in the same manner as the original appointments were made. Vacancies

The program committee shall appoint an agent, subject to the approval of the director, who shall administer the proration program under the direction of the program committee and who may be removed from office in the same manner as he was appointed. The salary or compensation of such agent shall be fixed by the program committee subject to the approval of the director. Zone agent

Such agent shall appoint such deputy agents and other assistants as may be necessary to direct the program, which appointments shall be subject to the approval of the program committee. Such agents, deputy agents and other assistants are employees of the zone and not of the State of California. No officer or employee shall receive compensation based on a percentage of volume involved in a prorate program, or in any manner that would lend encouragement to the promotion of a proration program for the purpose of increasing salaries and income. Employees

(Amended by Chs. 471 and 743, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Sec. 18.1. The marketing program to be made effective in any proration zone shall be so formulated as to rectify as far as possible the adverse marketing conditions specified in Section 10 hereof, and to maintain market stability under the limitations of this act. Such marketing program after being in effect may be altered or modified in minor particulars from time to time by such program committee with the approval Procedure minor amendments

Procedure
major
amendments

Negative
referendum

of the commission; provided, that the commission may require the director to hold a hearing in the zone prior to such approval. If any alteration or modification is proposed by the program committee altering the program then in effect, by the addition of any one or more of the particulars (a), (b), (c), (d), or (e) of Section 19.1 hereof, the commission shall not approve such alteration or modification unless a public hearing is held thereon. Following the public hearing a referendum shall be conducted by sending a mail ballot to all producers or their duly authorized agent as shown on the lists of producers of the commodity affected compiled in accordance with the provisions of this act and such alteration or modification shall not become effective if 40 per cent or more of said producers vote against such proposed alteration or modification. Before approving any alteration or modification of any marketing program, the commission must find that the same is reasonably calculated to carry out the purposes and attain the objectives of this act.

(Added by Ch. 471, Stats. 1935; amended by Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Powers of
program
committee

Sec. 19. Under the authority of a marketing program approved as provided in this act, a program committee shall determine the method, manner and extent of proration and the movement of the prorated commodity from harvest into a primary channel of distribution. Proration may be periodic or seasonal in character and may be based upon actual production, whether in storage or otherwise, or upon estimated production. Any estimation of production shall be subject to revision by the program committee in accordance with crop conditions. In estimating production a program committee shall give consideration, among other factors, to the normal production of the various producing units. The program committee shall be empowered:

(a) To appoint and empower subcommittees in the separated producing areas within the zone to facilitate the carrying out of the purposes of this act.

(b) To collaborate and cooperate with agencies or organizations with similar purposes, whether of this State, other States or of the United States, in the formulation and execution of a common marketing program; provided, that in proper cases the commission may require such collaboration and cooperation.

(c) To minimize an existing surplus by cooperating with the proper agencies in the enforcement of applicable existing standardization or other laws of this State, and of the United States, enacted to protect the consuming public from fraud or deception.

(d) To make contracts and agreements in the name of the zone in the furtherance of any of the powers of the program committee.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 19.1. The program committee for the purpose of minimizing the effect of surpluses or other adverse market conditions may be empowered in any program in any one of more of the following particulars:

Authorized
types of
regulation

(a) To establish and maintain surplus, stabilization or diversion pools. The program committee shall be authorized to receive from each producer for delivery into a surplus pool or stabilization pool the uncertificated portions of the marketable supply of the agricultural commodity covered by a marketing program and market the same by grades or sizes for the account of such producers when it can be advantageously disposed of either in its original or converted state. The program committee shall designate the quantity or the percentage of the marketable supply of such commodity that shall be placed in the stabilization pool and the quantity or the percentage of the marketable supply of such commodity that shall be placed in the surplus pool. The program committee shall be authorized to receive from each producer for delivery into a diversion pool such quantity or percentage of the production, of each producer, which fails to qualify for marketing or sale under grade, quality or size regulations established in the marketing program or under standardization laws or other laws of this State or of the United States. In operating any such stabilization, surplus or diversion pool, the program committee may fix grading, packing and servicing charges to be assessed against such commodities received into such pools and requiring such handling. The program committee shall have title to all of the commodity in each of such pools and shall handle all of such commodity received into each of such pools and account for the same to each producer who is beneficially interested therein upon a pooled basis.

Pools

Grading, and
packing
charges

(1) In the case of surplus pools, the contents of any such pool shall not be marketed in any form which would directly compete with that part of the crop which is regularly certificated or which is in a stabilization pool. However, any part of any such surplus pool may be turned over by a program committee to charitable organizations, self-help cooperatives, and similar agencies under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade.

(2) In the case of any stabilization pool, the contents thereof may be disposed of or may be marketed from time to time as the program committee deems advisable, and consistent with the maintenance of stabilized marketing conditions.

(3) In the case of any diversion pool, the contents thereof shall be disposed of for by-products or for other diversion purposes under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade.

Diversion of
surplus

(b) To create, establish or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market and disposal of such surplus in such manner as to maintain stability in the market and to dispose of such surplus or the contents of established pools and/or any of their derived products.

Equalization
fund

(c) To create, maintain and disburse an equalization fund to be used for the removal of any inequalities between producers as to the total volume marketed through prorated channels resulting from errors in estimating production or surplus or for indemnifying producers whose production, in whole or in part, is diverted in green form or otherwise from normal marketing outlets or diverted to relief, by-products, or other noncompetitive purposes pursuant to a marketing program.

Volume,
grade and
size
regulation

(d) To establish, adopt and apply methods for correlating the marketable supply of any commodity to the reasonable market demands therefor by means of volume limitation, time limitation, diversion, or by grade, quality or size regulations applicable to the total production of any commodity, or to that portion of any commodity which qualifies for marketing pursuant to standards authorized in the marketing program or standardization laws or other laws of this State, or of the United States.

Advertising
or trade
stimulation

(e) To broaden distribution and increase consuming outlets by appropriate educational and trade stimulation efforts of a general industry nature and not unfairly depreciative of the quality of any other food product.

The cost of the exercise of such powers as are herein granted to the program committee shall be a part of the cost of the operation of the program and shall be obtained through fees in the same manner as other costs of the program; provided, that no part of any funds raised for equalization fund purposes specified in subsection (c) of this section shall be applied to the cost of maintenance of the commission and the Department of Agriculture.

Liability of
members

No member or alternate member of any program committee nor any employee thereof shall be held liable individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member or employee, except for acts of dishonesty.

Tree and vine
removal

(f) For the purpose of providing for the adjustment of production of any agricultural commodity by means of tree or vine pulling, the program committee may receive applications from growers for acreage adjustment payments. The program committee shall, upon proper review and certification, make such acreage adjustment payments on an equitable basis from funds collected for such purpose on a uniform basis from all commercial growers of such agricultural commodity in this State, or from funds received from Federal, State or other agencies for such purpose.

No program of production adjustment adopted hereunder shall authorize payments for the removal of acreages of trees or vines of the species, variety or varieties specified in the program which have, during the three years immediately preceding the date of application, produced an annual yield per acre in excess of the comparably computed average yield from bearing trees or vines of the same species, variety or varieties for the State as a whole, such yields and averages to be determined by the director from statistical data compiled by State or Federal agencies or such other data as the director deems to be representative and reliable.

(Added by Ch. 471, Stats. 1935; amended by Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 20. After any marketing program has been formulated and has been approved as provided in this act, the agent for the zone shall assume the administration of the program and any subsequent modification thereof and the issuance of proration certificates thereunder. Such certificates shall be divided into primary and secondary certificates. Each producer shall be entitled to one primary certificate which may indicate the quantities of the commodity, for which the program has been instituted which the producer named in such certificate shall be entitled to harvest or otherwise prepare for market and delivery into the primary channels of trade. Said primary certificates may also indicate from time to time the number of secondary certificates theretofore issued under it. Secondary certificates shall be numbered consecutively and shall be used to control the time and volume of harvesting or other preparation for disposal. Such secondary certificates shall accompany all deliveries of the prorated commodity by producers into a primary trade channel; provided, that in the case of commodities which are normally concentrated for preparation for market, the program committee may authorize harvesting of the entire crop for the purpose of delivery to a concentration point and subsequent marketing control. Such certificates shall not be negotiable between producers except with the approval of the program committee and the director.

Primary and
secondary
certificates

In the operation of any program, cooperative and other market agencies entitled to the possession of agricultural commodities for marketing purposes may be authorized in writing by the program committee to receive certificates for producers represented by them and to represent their respective producers when proration is applied to the commodity while in the possession of such agencies.

(Amended by Ch. 471, Stats. 1935; Chs. 548 and 894, Stats. 1939.)

SEC. 21. The zone agent for each marketing program shall collect, either for each primary certificate or for each secondary certificate or for both such kinds of certificates issued

Collection
of fees

Proportion
of fees
payable to
commission

to producers, a reasonable and proportional fee to be fixed by the program committee, subject to the approval of the director, so calculated as to provide an amount adequate to defray the necessary expenses of instituting and carrying out such marketing program and a proper proportion of the cost of the maintenance of the commission and of the Department of Agriculture in the performance of duties required by this act. The proportion of the fees payable to the commission and to the Department of Agriculture may vary upon a seasonal basis for each program according to the estimated expense to be incurred by the director and the commission in administering such program; provided, that the amount so required shall not exceed fifteen per cent (15%) of the certificate fees collected by the zone agent specifically for administrative purposes and in addition such proportion of fees collected for any trade stimulation or sales promotion program as may be required by the commission and the director to administer such program which shall in no event exceed five per cent (5%) of the fees collected for such purpose, unless the payment of a larger proportion of such funds is approved by the program committee for such marketing program.

Upon request of any program committee of any marketing program, the commission shall confer with said committee or its representatives prior to fixing the amount or proportion of any fees of said marketing program payable to the Department of Agriculture for maintenance of the commission and the department in the performance of the duties required by this act.

Deposit and
expenditure
of funds

All such fees shall be deposited promptly by the zone agent in a bank or banks approved by the Director of Finance, and shall be accounted for forthwith to the Director of Agriculture. Such deposit shall be made in the name of the zone under which such funds are collected and shall be disbursed by the director, pursuant to rules and regulations prescribed by the director, and approved by the commission, only for the expenditures incurred by the program committee in carrying out the specific purposes and provisions of such marketing program, including all necessary expenses incurred in the formulation, administration and enforcement of such marketing program.

The proportionate amount of fees payable, as determined herein, to the Department of Agriculture shall be withdrawn from such funds monthly by the director and paid into the Department of Agriculture Fund in the State Treasury and shall be used only for the support of the commission and of the Department of Agriculture in carrying out their duties as required by this act.

At the end of any marketing season as designated in each marketing program, after proper provision has been made for the payment of all necessary expenses incurred in connection therewith, any funds remaining to the credit of the program

committee shall be refunded upon a pro-rata basis to all persons from whom such funds were collected; provided, that, if the program continues in effect, such refund may be deferred for a period not to exceed six months from the date of the close of the next preceding marketing season so as to permit the program committee to use such residual funds to meet operating expenses in such succeeding season until sufficient funds have been collected to enable such committee to make such refund and to defray current operating expenses. At the time such refund is made, the program committee shall file with the director a claim for such refund to growers entitled thereto; provided, however, that, if the director finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro-rata refund to such persons, the director may authorize the retention of such funds to the credit of the program committee for subsequent use in carrying out such marketing program; provided further, that on or after the effective date of this act the director may authorize the transfer of any balances remaining from previous seasons to the fund available for the then current season and any balances so transferred shall be used for carrying out the marketing program in such current season or the next succeeding season.

Refunds to
growers

No agent or employee of the program committee shall have or receive any funds collected pursuant to the provisions of this act until such agent or employee has filed with the director a bond in such form and in such penal sum as the director may prescribe.

(Amended by Ch. 743, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 22. The director shall have power to establish such rules and regulations consistent with this act as may be necessary to carry out the purposes and attain the objectives thereof.

Powers of
director

The exercise of the powers granted to a program committee in its administration of a proration program made effective in accordance with the provisions of this act shall be subject to the approval of the director; provided, that if the director finds that the exercise of such powers conforms with the provisions of the program and this act he shall approve such exercise.

The director through his duly authorized representatives and agents, including any zone agent in charge of a proration program, shall have access, solely for the purposes of investigating possible violations of any program, to the records of producers, dealers, distributors, public and private property transportation agencies, and handlers of a commodity as to which a proration program has been instituted, and shall have at all times free and unimpeded access to all buildings, yards, warehouses, stores and transportation facilities and other places in which any commodity under a proration program is

kept, stored, handled or transported. All information obtained shall be confidential and shall not be disclosed except when required in a judicial proceeding.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Act
prohibited

SEC. 22.5. It shall be a misdemeanor for:

(1) Any person to wilfully render or furnish a false or fraudulent report, statement or record required under this act;

(2) Any person to deliver into a primary trade channel without proper authority any commodity upon which a proration program shall have been instituted;

(3) Any handler, dealer or carrier to receive or have in his possession, within this State, without proper authority any commodity upon which a proration program has been instituted;

(4) Any person to deliver or to attempt to deliver any commodity that has been diverted under the provisions of any proration program into any channel of trade other than that into which diversion has been ordered;

(5) Any person to aid or abet in the commission of any of the acts specified in this section, and each infraction shall constitute a separate and distinct offense.

Common
carriers
exempted

The provisions of this section shall not apply to a common carrier operating over a regular route or between fixed termini where such shipment is made by such common carrier in good faith and in accordance with its duties as a common carrier and where a record of every such shipment within or from this State is kept by such common carrier showing the date of shipment, character and quality of shipment, origin and destination of such shipment, and the names of the consignor and the consignee. Such record shall be open to inspection at all reasonable hours by or on the written order of the official or administrative authority charged with the enforcement of this act or any marketing program instituted thereunder.

(Added by Ch. 471, Stats. 1935; amended by Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Termination
of proration
program

SEC. 23. After the institution of any proration program, such proration program shall be terminated when there is filed with the commission an application for its termination signed by not less than 40 per cent of the producers and by the owners of 40 per cent of the producing factors of the industry within the zone in which the program is effective. The signatures of the producers and owners upon the application shall be those of the producers and owners whose names appear on the list or lists provided for in Section 11 or on any corrected list which the commission shall have had prepared during the existence of the program, or their successors in interest. Each petitioner shall upon affixing his signature thereto write in the date of signing, and no signature to such petition shall be

valid for any purpose if affixed thereto more than six months prior to the filing of such application with the commission. Such petition shall be accompanied by a good and sufficient undertaking in an amount equal to the probable cost of conducting said hearing. A hearing must be held upon the petition to determine the sufficiency of the signatures thereto, which hearing must be held within 30 days after the presentation of the petition. If upon such hearing, it shall be established that the petition to terminate is signed by said required 40 per cent of such producers and by the owners of 40 per cent of the producing factors, the commission shall thereupon terminate the program; provided, that any program on a seasonal crop shall not be terminated except at the end of its marketing season.

In such case the cost of conducting such hearing shall be paid from the funds of the program to the extent that they are available and thereafter from the undertaking. In the event the petition be found insufficiently signed, the entire cost of conducting such hearing shall be paid from the undertaking. In the event of the termination of a program, any funds remaining for the use of the program committee not otherwise disposed of by the provisions of this act shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

The director, on behalf of the commission, may at any time initiate an investigation to determine whether or not the facts specified in Section 10 hereof continue to exist. Upon a finding that any one or more of the prerequisite facts no longer exist, the commission shall terminate or suspend said program. In no case shall any program on a seasonal crop be terminated or suspended except at the end of its marketing season.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Chs. 603 and 1186, Stats. 1941.)

SEC. 24. Any person who shall possess, market, handle or transport any commodity in violation of any provision of an original or modified proration program approved and made effective or in violation of any rule or regulation adopted by any program committee and approved by the director may be enjoined by the director or by the zone affected with the approval of the director in an action brought in the superior court for the county in which any of such violations is alleged to be occurring. There may be enjoined in the same proceeding any number of defendants alleged to be violating the same program although their actual violations of the program may be separate and distinct and occur in different counties. In any action for injunction brought hereunder, the procedure shall be governed by the provisions of Chapter 3, Title 7, Part 2 of the Code of Civil Procedure of the State of California.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1186, Stats. 1941.)

Injunction
proceedings

Penalties

SEC. 25. Any person who violates any provision of a proration program approved and made effective or who violates any rule or regulation adopted by any program committee and approved by the director shall be liable civilly in an amount not to exceed a sum of five hundred dollars (\$500) for each and every violation to be recovered by the director or by the zone affected in an action brought with the approval of the director in any court of competent jurisdiction. All sums recovered under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Alteration
of zone
boundaries

SEC. 25.1. Any other area or areas within the State of California producing the same kind or variety of agricultural commodity as a proration zone already established under this act, and competing with such proration zone, may be annexed to such already established proration zone in the following manner:

The area shall be organized as a proration zone and a proration program formulated in the same manner as any other zone, except that the proration and marketing programs shall be identical with those of the existing zone and all rules and regulations shall apply alike to both zones. At the end of the current marketing season the two zones shall be consolidated by order of the commission and thereafter shall constitute one zone. When an additional area or areas are added to a proration zone the existing program committee of the original zone shall function until the end of the current marketing season, at which time a new committee shall be appointed to represent the entire area as provided for in Sections 15 and 18 of this act.

(Added by Ch. 471, Stats. 1935; amended by Ch. 894, Stats. 1939.)

Appropriation

SEC. 26. There is hereby appropriated out of any funds in the State Treasury not otherwise appropriated the sum of ten thousand dollars (\$10,000) to be expended by the commission when, as and if necessary in the performance of the duties herein imposed upon it. Said sum shall constitute a loan to said commission and shall be repaid in 10 equal annual installments without interest.

Separation
clause

SEC. 27. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The Legislature hereby declares that it would have passed each provision of this act irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases, as provisions hereof, be declared unconstitutional.

(Added by Ch. 471, Stats. 1935.)

SEC. 28. The director and the Agricultural Prorate Advisory Commission, upon the effective date of this act, shall succeed to and are hereby vested with all the powers, duties, jurisdiction and responsibilities of the Agricultural Prorate Commission. The Agricultural Prorate Commission shall, immediately upon the effective date of this act, deliver to the director all books, records, documents and all other property of any kind in its possession. The Agricultural Prorate Commission Fund is hereby abolished. All money in said fund on the effective date of this act shall be transferred to the Department of Agriculture Fund. Any rebate or other payment payable from the Agricultural Prorate Commission Fund shall after the effective date of this act be paid from the Department of Agriculture Fund.

Transfer of
powers and
funds.

(Added by Ch. 894, Stats. 1939.)

SEC. 29. This act shall be known and may be cited as the ~~the~~ Agricultural Prorate Act.

(Added by Ch. 894, Stats. 1939.)

SEC. 30. All proration programs in effect at the effective date of this act and all zones in existence for the administration of such programs shall remain in existence and in full force and effect and shall be subject to termination, suspension and amendment in the manner in this act provided and shall be administered in accordance with the provisions hereof.

Continuation
existing
program

Any petition for termination filed before the effective date of this amendatory act shall not be affected by this act, but, if not finally determined, all subsequent proceedings on such petition shall be in conformity with this amendatory act.

(Added by Ch. 894, Stats. 1939.)

APPENDIX "A"

State of California
Department of Agriculture
Sacramento

AGRICULTURAL PRORATE ACT

Revised to September 13, 1941

APPENDIX "B."

**STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE
SACRAMENTO, CALIFORNIA**

**A STATEMENT RELATING TO THE
AUTHORIZATION FOR AND THE ECONOMIC
EFFECTS OF THE 1940-1941 SEASONAL
MARKETING PROGRAM FOR
RAISINS**

BUREAU OF MARKETS

September 1942

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I.

**Authorization, Procedure and Economic Status of the
1940-1941 Seasonal Marketing Program for
Raisins.¹**

The 1940-1941 Seasonal Marketing Program for Raisins was established pursuant to the provisions of the Marketing Program for Raisins, as Amended, issued in July 1940 and made effective in August 1940 pursuant to the provisions of the Agricultural Prorate Act of the State of California.

The Act authorized the establishment and maintenance of surplus and stabilization pools. Other features were authorized as well. The specific wording of the authorization for surplus and stabilization pools appears in paragraph (a), Section 19.1 of the Act, and reads as follows:

“(a) To establish and maintain either surplus or stabilizing pools, or both, which pools shall be authorized to receive from each producer from time to time his uncertificated portions of the prorated commodity and market the same by grades for the account of the producer when it can be advantageously disposed of either in its original or converted state. The program committee shall designate the quantity that shall be placed in a stabilizing pool and the quantity that shall be placed in the surplus pool. In operating any such stabilizing or surplus pool, a program committee may fix grading, packing and servicing charges to be assessed against such commodities received by the pool or pools and requiring such handling. The program committee shall have title to all such pools and shall handle all commodities received

¹Made effective and operated under the Marketing Program for Raisins, as Amended, authorized by the Agricultural Prorate Act.

by a pool and account for the same to the producers beneficially interested on a pooled basis. Each producer delivering his uncertificated tonnage to a pool shall be credited for his proportionate share of all tonnage so delivered.

"(1) In the case of surplus pools, the contents of any such pool shall not be marketed in any form which would directly compete with that part of the crop which is regularly certificated or which is in a stabilizing pool. However, any part of any such surplus pool may be turned over by a program committee to charitable organizations, self-help cooperatives, and similar agencies under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade.

"(2) In the case of any stabilizing pool, the contents thereof may be disposed of or may be marketed from time to time as the program committee deems advisable, and consistent with the maintenance of stabilized marketing conditions."

The Act gives further authorization to the Program Committee with respect to facilities for financing, packing, servicing, processing, preparation for market and disposal. Paragraph (b), Section 19.1, reads as follows:

"(b) To create, establish or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market and disposal of such surplus in such manner as to maintain stability in the markets and to dispose of such surplus or the contents of established pools and/or any of their derived products."

It is to be noted that the regulations are direct on the grower and deliveries to the pool are "for the account of the producer."

In making the enabling program effective, the Director of Agriculture must follow certain safeguarding procedures commonly practiced in the application of administrative law. Testimony and evidence is received with respect to the enabling program at a formal public hearing conducted by the Director of Agriculture.² Following the public hearing the Director of Agriculture must determine whether the program effectuates the declared purposes of the Act. The Act specifically sets forth standards to guide the Director and the Agricultural Prorate Advisory Commission³ in their actions. These standards are:⁴

"(1) That the petition is signed in person or by authorized representatives by the required number of producers; and

"(2) That the economic stability of the agricultural industry concerned is being imperiled by market conditions prevailing or liable to prevail as to the variety or kind of commodity sought to be prorated or is being imperiled by the existence or imminence of a seasonal or annual surplus; and

"(3) That agricultural waste is occurring or is about to occur; and

"(4) That the institution of a program of prorated marketing will conserve the agricultural wealth of the State and will prevent threatened economic waste; and

"(5) That the institution of a proration program will advance the public welfare without discrimination against any producer; and

²Section 9 of the Act.

³An Advisory Commission appointed by the Governor of the State of California pursuant to Section 3 of the Act.

⁴Section 10 of the Act.

"(6) That the institution and operation of a proration program will not result in unreasonable profits to the producers and that the commodity named in the petition can not be marketed at a reasonable profit to producers otherwise than by means of such a program; and

(7) That the proposed zone of proration includes all of the territory within this State reasonably necessary to carry out the purposes and attain the objectives of this act;"

If the Commission finds that the above conditions exist, the Director must submit the program in a referendum to all raisin producers of record.⁵ If the required number of producers favor the program by giving written assent, the Director is authorized to make the enabling program effective.

In connection with the administration of the program, the Director of Agriculture must appoint a committee to assist in the administration of the program.⁶ In the case of the Raisin Program, the industry committee consisted of seven members, commonly known as the Program Committee of Raisin Proration Zone No. 1.

The Program Committee is, among other things, empowered to collaborate and cooperate with other agencies. The specific wording with respect to this appears in paragraph (b), Section 19 of the Act, and reads as follows:

"(b) To collaborate and cooperate with agencies or organizations with similar purposes, whether of this State, other States or of the United States, in the formulation and execution of a common market-

⁵Section 16 of the Act.

⁶Section 15 of the Act.

ing program; provided, that in proper cases the commission may require such collaboration and cooperation."

All recommendations and actions of the Program Committee are subject to the approval of the Director of Agriculture.

With respect to the specific program for the 1940-41 raisin marketing season, there was an additional safeguard applied, namely, the Director of Agriculture submitted the 1940-41 seasonal program in a referendum among raisin growers. In this referendum the Director found that the 1940-41 seasonal program was favored by 72% of the raisin growers voting in said referendum and, in view of this, the Director made effective on September 7, 1940 the 1940-41 Seasonal Marketing Program, authorizing a stabilization and a surplus pool. Collaboration with the Federal Government had been arranged for by a loan authorization from the Commodity Credit Corporation, a subsidiary of the Reconstruction Finance Corporation, and an underwriting sales policy agreed to by the Agricultural Marketing Administration of the United States Department of Agriculture.

The Program Committee, in accordance with Section 1, Article III of the Marketing Program for Raisins, as Amended, made certain economic findings prior to its recommendations. These findings of the Program Committee appear in the minutes of the meeting of the Program Committee of Raisin Proration Zone No. 1 held at 10:00 o'clock A. M., August 13, 1940, and continued to subsequent days, in Room 1010 Pacific Southwest Building, Fresno, California. In this connection, attention is called to Section 5, Article III of the Marketing

Program for Raisins, as Amended, exempting the 1940 season from certain deadline dates. The findings of the Program Committee, made on August 15, cover the production of California grapes, the disposition of California grapes, packers' carryover stocks, estimated 1940 production, total probable supplies, quantity likely to be of inferior and substandard quality, estimate of supply of standard raisins, packers' required merchandising stocks a year hence, namely, September 1, 1941, probable market supply of standard quality raisins, probable domestic sales, including Canada as a part of the over-all domestic market, probable tonnage over and above market requirements, normal exports in non-wartime periods, and a historical record of the disappearance of California raisins in normal channels. The details of these facts as considered by the Program Committee appear in the following Tables, numbered 1a to 3, inclusive, relating to California raisins:

CALIFORNIA RAISINS

TABLE 1a

Disposition of California Grapes—1939

Use	Raisin Varieties	All Grapes
	Tons	Tons
Dried	980,000	988,600
Crushed	140,000	712,000
Fresh—out of state	119,000	450,800
Fresh—in the state	18,000	64,600
Canned	12,000	12,000
TOTAL	1,269,000	2,228,000

Taken from report of California Crop Reporting Service July 11, 1940.

TABLE 1b

Production of California Grapes

	<u>1939</u> <u>Tons</u>	<u>Estimated</u> <u>1940 Tons</u>
Wine Varieties	569,000	585,000
Raisin Varieties	1,269,000	1,232,000
Table Varieties	390,000	387,000
	<hr/>	<hr/>
TOTAL All Varieties	2,228,000	2,204,000

Taken from report of California Crop Reporting Service August 12, 1940.

TABLE 2

	<u>Tons</u>
Packers stocks—September 1, 1940	70,000
Estimated 1940 production	190,000
	<hr/>
Total probable supply	260,000
Inferior and Substandard	10,000
	<hr/>
Estimate of supply of standard raisins	250,000
Packers merchandising stocks, Sept. 1, 1941	50,000
	<hr/>
Probable market supply of standard raisins	200,000
Probable domestic sales, including Canada	140,000
	<hr/>
Tonnage with no certain market	60,000
Normal exports ¹	70,000

¹(No exports to be anticipated in 1940-1941.).

TABLE 3

Disappearance of Raisins in Normal Channels 1934-39

<u>Twelve Months Beginning Sept. 1</u>	<u>Domestic Exclusive of Relief¹</u>	<u>Exports</u>	<u>Total</u>
	<u>1,000 Tons</u>	<u>1,000 Tons</u>	<u>1,000 Tons</u>
1934-35	143	48	191
1935-36	152	61	213
1936-37	141	59	200
1937-38	132	77	209
1938-39	128	84	212
Estimated 1939-40	127	63	190

Taken from tables prepared by Dr. S. W. Shear, College of Agriculture.

Other factual information available to the Committee and to the Director of Agriculture at the time from the College of Agriculture (later published) covered prices, production, carryover stocks, domestic disappearance, exports, consumption, relief distribution, and foreign production, summarized as follows:

¹ (Relief means distribution by Federal Government to persons on relief rolls.)

TABLE 4

Dried Raisin Prices, Production, Supplies, and Shipments, 1935-1939
(Thousands of short tons, natural or unprocessed weight, unless other unit given)

	Crop years beginning September 1					
	1939	1938	1937	1936	1935	Average 1935-1938
California:²						
Price, natural Thompsons						
(1) Grower to packer, cents per lb.	2.2	2.5	3.0	3.2	2.8	2.9
(2) F. O. B., packer, ¹ cents per lb.	3.4	3.7	4.0	4.8	4.1	4.2
(3) Production harvested	245	294 ²	254 ²	190 ²	203	235
(4) Carryin, (unshipped), Sept. 1 ³	105	85	55	65	80	71
(5) Available supplies (3+4)	350	379	309	255	283	306
(6) Carryout (unshipped) ³	103	105	85	55	65	77
(7) Disappearance, total (5-6)	247	274	224	200	218	229
(8) Regular trade shipments ⁴	202	212	209	200	213	209
(9) Direct relief shipments ⁴	45	10	15	0	0	6
(10) Diversion by programs	— ⁵	52 ⁵	0	0	5	14
(11) Exports, including Canada	62	84	77	59	61	70
(12) Per cent shipments exported	25	31	34	30	28	31
(13) Consumption, U. S., (7-11)	185	190	147	141	157	159
(14) Regular trade shipments ⁴	140	128	132	141	152	139
(15) Direct relief shipments ⁴	45	10	15	0	0	6
(16) Diversion by programs	—	52	0	0	5	14
(17) Per-capita consumption, lbs.	2.8	2.9	2.3	2.2	2.5	2.5
(18) Regular trade shipments ⁴	2.1	2.0	2.1	2.2	2.4	2.2
(19) Direct relief shipments ⁴	0.7	0.2	0.2	0.0	0.0	0.1
Foreign:						
(20) Production, raisins	231	256	188	234	238	227
(21) Production, currants	148	147	152	147	192	159
World:						
Raisins						
(22) Production (3+20)	476	550	442	414	441	462
(23) Supply (5+20)	581	635	497	479	521	533
Raisins and currants						
(24) Production (21+22)	624	697	594	561	633	621
(25) Supply (21+23)	729	782	649	626	713	692

¹Estimated f.o.b. packer prices on choice, bulk Thompsons, based on quotations in California Fruit News.

²Unofficial production estimates in 1936-1938. The small currant crops included in all California data.

³Carryover excludes diversion pools—1935 and 1938 crops. Subtracting unshipped stocks in the hands of federal government gives packers' stocks on Sept. 1 as follows: 1938, 75,000 tons; 1939, 62,000 tons.

⁴Purchases with blue stamps since Oct. 1, 1939 as indirect relief are included in shipments through regular trade channels and excluded from relief.

⁵The 52,000 tons of 1938 crop in the diversion pool are shown here as disappearing during the 1938 crop year, although they were sold both during 1938 and 1939 crop years.

Source of data: Compiled by S. W. Shear, Giannini Foundation, May 28, 1941, from official and reliable unofficial data, some of which are subject to moderate revision. College of Agriculture, Agricultural Experiment Station, University of California, Berkeley, California.

The basic economic reasons for a supply of raisins in excess of any reasonable market requirements in the 1940 season and seasons just prior to that are: (1) an extension of grape acreage because of favorable prices of raisins during the 1914-1919 period, (2) a further rapid extension of acreage because of the newly developed and highly desirable Thompson Seedless variety, (3) a shrinking of the normal export market occasioned by general nationalistic and other international economic forces which developed following World War I, (4) the long bearing life of grapevines, making rapid adjustment of supplies to market requirements impossible, and (5) the production of Thompson Seedless raisins in Australia where climatic conditions are similar to those of California.

Tonnages delivered to the Stabilization and Surplus Pools, as revealed by an audit report made by the State Department of Agriculture dated February 17, 1942, are as follows:

TONNAGE OF RAISINS DELIVERED TO POOLS

Variety	Stabilization (Tons)	Surplus (Tons)	Total (Tons)
Thompsons	73,948	29,581	103,529
Muscats	3,232	1,791	5,023
Sultanas	1,113	445	1,558
TOTAL	78,293	31,817	110,110

All tonnages delivered to both pools were sold in an orderly manner either to regular commercial packers or to

the Agricultural Marketing Administration, then known as the Surplus Marketing Administration. Sales to the Agricultural Marketing Administration were for Lend-lease operations and for distribution to persons on relief rolls. Total loans from the Commodity Credit Corporation amounted to \$5,372,254.10.

Total prices paid to growers from loan proceeds and sales proceeds were at the following rates per ton: Thompson Seedless, \$57.03 per ton; Muscats, \$59.98 per ton, Sultanas, \$53.05 per ton. These prices are reasonable and in no economic sense are they unduly high. An appraisal of the reasonableness of these prices may be had by comparison with (a) production costs, (b) purchasing power parity prices as outlined by Congress, (c) wholesale prices during the period of the program as compared with wholesale prices prevailing prior to the operation of the program and those prevailing subsequent to the operation of the program, (d) retail prices during the period of the program as compared with retail prices prior to and subsequent to the period of the program.

II.

Production Costs.

To a producer of raisins, as well as to producers of other commodities, the most important financial consideration is the cost of production and its relationship to price. The planting and maintenance of grapevines, installation of irrigation facilities, and building of family homesites are predicated on the assumption of a reasonably stable return over and above costs. The raisin industry is very concentrated because of climatic and soil conditions. When market returns under these conditions fail to cover total costs, it seriously disrupts the economic status of every private and public institution in the community.

The commercial life of grapevines is a matter of many decades rather than years and short time adjustments in production are completely impractical. It is in the interest of the general welfare, therefore, to give full consideration to any stability that can be achieved through orderly marketing procedures under the police power of the State and the safeguards attendant therewith.

The legislature of the State of California recognized the existence of such circumstances and the inability of individuals to correct the problem. The statement of the legislature on this problem is set forth in Section 1 of the Prorate Act.

"The people of the State of California do enact as follows:

"Section 1. The unreasonable waste of agricultural wealth occasioned by the harvesting, preparation for market and delivery to market of greater quantities of agricultural commodities than are reasonable necessary to supply the demands of the market is opposed

to the public interest and the difficulty inherent in any attempt by individuals to correlate within a reasonable degree the supply of any agricultural commodity to current consumptive demands is creating chaotic economic conditions in certain agricultural areas of the State of such severity as to imperil the ability of agricultural producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase and increasing the tax burdens of other citizens for the same purposes. In the interest of the public welfare and general prosperity of the State, the unnecessary and unreasonable waste of agricultural wealth, hereinafter referred to as 'agricultural waste,' involved in the harvesting or preparation for and delivery to market of agricultural commodities for which there exists only a limited consumer demand should be eliminated while at the same time preserving to all agricultural producers an equality of opportunity in the available markets."

In examining costs of producing raisins with a view of allowing for costs which would maintain in production a sufficient number of producers to produce a supply of raisins necessary to fulfill the normal requirements of consumers, the following yields are set forth.

YIELDS (TONS PER ACRE—MATURE VINEYARDS)

	<u>Usual</u>	<u>Good</u>	<u>Exceptional</u>
Raisin Variety Grapes (dried tons per acre)	1.0	2.0	3.4

*Farm Management Crop Manual. R. L. Adams; University of California Syllabus Series No. 278, page 142.

Set forth in the three following tables, marked Table 5, Table 6, and Table 7 are costs of production for raisins up until 1941, when costs began rising.

TABLE 5

RAISIN GRAPES

Table 13. A Standard of Labor and Material and Other Costs for the Production of Raisins in the San Joaquin Valley with a yield of 2 tons of raisins per acre.

	Man labor	Horse labor	1½-ton truck	Cost per acre	Cost per ton
	Hours per acre			Dollars	
Pruning	18			5.40	
Brush disposal	4	4		1.60	
Tying	4			1.20	
Planting covercrop	1			.30	
Suckering	2			.60	
Sulfuring	1		.5	.85	
Dusting for leaf hopper	1		.5	.85	
Cultivate and furrow	11	22		5.50	
Irrigate	18			5.40	
Miscellaneous other work	4	2	1.0	2.50	
Total cultural labor	64	28	2.0	24.20	12.10
Picking 700 trays, 20# fresh,					
5.7# dry	62	2		18.80	9.40
Turning and rolling	18			5.40	2.70
Boxing and hauling out	8	8		3.20	1.60
Hauling to market	2		2.0	2.80	1.40
Total labor cost	154	38	4.0	54.40	27.20
Water or power for pumping 30"				7.50	
Covercrop seed				1.20	
Sulfur 40 lbs. @ 4¢				1.60	
Cyanide or other dust for leaf hopper control				3.50	
Paper trays, 700 @ \$4.00 per thousand				2.80	
Miscellaneous, twine, etc.				1.25	
Total material cost				17.85	8.93
General expense, 5% of all above costs				3.61	
County taxes, \$175 value @ 2½%				4.25	
Machinery repairs				1.00	
Compensation insurance				.80	
Total cash-overhead costs				9.66	4.83
Total cash costs				81.91	40.96

	Man labor	Horse labor	1½-ton truck	Cost per acre	Cost per ton
	Hours per acre			Dollars	
Investment and investment overhead	Original cost	Average value	5% in- terest	Depre- ciation	
	Dollars per acre				
Vines and trellises	200.00	100.00	5.00	5.00	
Buildings	10.00	5.00	.25	.25	
Irrigation system	60.00	30.00	1.50	2.50	
Tillage tools	10.00	5.00	.25	.75	
Small tools and misc.	4.00	2.00	.10	.40	
Land	200.00	200.00	10.00		
Total investment	484.00	342.00			
Total depreciation			8.90	8.90	4.45
Total cash and depreciation costs				90.81	45.41
Total interest on investment			17.10	17.10	8.55
Total all costs				107.91	53.96

The above costs are computed for a well-managed raisin grape vineyard. Overhead costs and rates for horses and trucks are about as they would occur on a 40-acre farm. Labor costs are computed at the following rates per hour: man-labor, \$0.30; horse work, \$0.10; and 1½-ton truck, \$1.10.

The cost per ton, with a 2-ton yield of raisins would be about \$54. If yield were 1 ton, cost would be \$90 a ton. With a 1.5-ton production of raisins per acre, cost per ton would be \$65.

Source: Standards of Production, Labor, Material and Other Costs for Selected Crops and Livestock Enterprises; Arthur Shultis, University of California, College of Agriculture and U. S. D. A. Cooperating.

TABLE 6

COST OF PRODUCING RAISINS (THOMPSON SEEDLESS)

Calculated on yield of 3,000 pounds of raisins per acre. Well-grown vineyard on sandy loam soil, irrigated, trellised, and free of serious weeds. 340 vines per acre planted 8 by 10 feet.
Basic rates per 9-hour day: tractor driver \$3.15; teamsters \$2.50; pruners and other hand labor \$2.25; use of 10 hp. tractor \$6.48; use of horses \$0.81 each.

Time of performance	Operations	Labor, equipment, and material	Rate of work per 9-hour day	Unit cost	Seasonal Cost per acre
December-January	Pruning Brush disposal Tying	Men; pruning shears and saws 2M 2H vine brush burner Men	270 vines per M. 9.0 acres 180 vines per M.	\$2.25 per M. 7.05 2.25	\$4.50 0.78 6.75
March	Plowing	Twine— $\frac{3}{4}$ ball per acre 1M 10T 2-14-in. plows 1M 1H 8-in. plow (3 furrows close to vines)	5.7 acres 3.0 12.0 9.0	10.87 3.48 10.94 2.25	0.65 0.39 1.91
May and June	Disking Sulfuring vines (2 times)	1M 10T 5-ft. double disk 1M knapsack duster	24.3	10.40	1.72
May-August	Cultivating (4 times at monthly intervals)	30 pounds sulfur (total) 1M 10T 10-ft. cultivator	3.0	2.25	0.75
June	Suckering vines Hoing around vines	1M Men	1.0 acre 24.3 acres	2.25 9.60	2.25 0.80
June and July	Furrowing for irrigating (2 times) Irrigating (2 times)	1M 10T 2-shovel furrower 1M Water—1 acre-foot	2.0	2.25 2.00	2.25 2.00
Total preharvest cost					\$27.97

Continued

TABLE 6
COST OF PRODUCING RAISINS (THOMPSON SEEDLESS)—Continued

Cultural practices	Time of performance	Operations	Labor, equipment, and material	Rate of work per 9-hour day	Unit cost	Seasonal cost per acre
September-October	Harvesting	Hauling out boxes and trays	1H 2H wagon	3.0 acres	\$4.50 per day	Brpt. fwd. \$27.97 \$ 1.50
	Picking (5 tons green weight)	Men		1 ton per M.	2.25 " M "	11.25
	Turning trays	5 man hours per acre			2.25 " " "	1.25
	Stacking trays	4 " "			2.25 " " "	1.00
	Boxing	12 " "			2.25 " " "	3.00
	Hauling out of vineyard	1M 2H wagon		3.5 tons	4.00 " " ton	1.71
	Hauling to warehouse	(By contract)			1.50 " " "	2.25
	Collecting trays	1M 2H wagon		4.0 acres	4.50 " day	1.12
	Total harvest cost					23.08
	Upkeep of ditches (from table 258)					2.34
	Use of equipment (pruners, lug boxes, drying trays, delivery boxes)					38.16
	Taxes					53.30
	Depreciation of vines					4.95
	Total cost per acre					\$99.80
	Cost per pound					0.033

Source: Farm Management Crop Manual; compiled by R. L. Adams and L. A. Crawford, University of California, College of Agriculture, Berkeley, California

TABLE 7

COST OF PRODUCING SELECTED CROPS

Example of Cost of Producing Thompson Seedless Grapes for Raisins (2-ton yield of raisins) Mature Vineyard

Vines set 8' x 12' (454 per acre) trellised; irrigated conditions; drying ratio 4:1.

A. Labor and use of equipment

Rates: M/H at 35 cents; H/L at 71 cents; use of 10/15 tractor \$6.60, including wages of driver; implement charges from table 9; 8" plow 15 cents; 5' cultivator 6 cents.

Operation	Crew and equipment	Cost per day	Days work (acres)	Cost per acre Per time	Total
Pruning	20 M/hrs. at 35¢				\$ 7.00
Brush disposal	2M 2H brush burner	\$7.72	18.0		.04
Wrapping and tying to trellises	4 M/hrs. at 35¢				1.40
Disking (2x): Per time Total	1M 10T 5' double disk	8.88	12.0	\$0.74	1.40
Single plowing (2x): 2 furrows next to vines: Per time Total	1M 1H 8" plow	4.01	2.5	1.60	3.20
Disking (2x): Per time Total	1M 10T 5' double disk	8.88	12.0	0.74	1.40
Furrowing for irrigation (3x): Per time Total	1M 10T 4-row furrow	8.28	25.0	0.33	0.99
Irrigating (3x): Per time Total	4 M/hrs. at 35¢			1.40	4.20
Suckering vines	3 M/hrs. at 35¢				1.05
Cultivating (2x): Per time Total	1M 10T 5' cultivator	8.16	12.0	0.68	1.36
Hoeing (2x): Per time Total	3 M/hrs. at 35¢			1.05	2.10
Sulphuring (3x): Per time Total	1M 2H power duster	4.87	20.0	0.24	0.72
Cyaniding (2x): Per time Total	Contract job			1.00	2.00
Harvesting					
Distributing trays, boxes	2M 2H wagon	8.00	3.0		2.66
Picking	725 trays of 22 lbs. (fresh) at 1.5¢ (contract rate)				10.88
Turning trays (2x): Per time Total	2M crew: total of 2 M/hrs. at 35¢			0.70	1.40

Continued

A. Labor and use of equipment—Continued

Operation	Crew and equipment	Cost per day	Days work (acres)	Cost per acre Per time	Total
Stacking trays	2M crew: total of 3 M/hrs. at 35¢				1.05
Boxing raisins	2M crew: total of 1 M/D at \$3.15				3.15
Hauling from vineyard	2M 2H wagon	8.00	4.0		2.00
Hauling to packing house	2 tons at \$1.50 per ton				3.00
Clean-up work:					
Collecting and storing trays and boxes	8M 2H wagon	8.00	4.00		2.00
Total labor and use of equipment: per acre					\$52.51
B. Materials					Cost per acre
Manure 1/3 of 8 tons at \$1.90 spread, applied once in 3 years					\$ 5.07
Irrigation water: 1.5 acre-feet at \$2.00					3.00
Twine for tying vines: 3/4 pound at 40¢					0.30
Sulphur: 45 pounds at 0.4¢					1.80
Cyandide dust: 20 pounds at 16 1/2¢					3.30
Total materials: per acre					\$13.47
C. Miscellaneous					Charge per acre
Use of drying trays: 727; cost \$116; interest \$2.32; depreciation \$5.80; taxes \$1.00; repairs \$1.00					\$10.12
Use of raisin boxes: 24; cost 24; interest \$0.48; depreciation \$1.20; taxes \$0.20; repairs \$1.00					2.88
Storage shed: cost per acre (prorated) \$20; interest \$0.40; depreciation \$1.00; taxes \$0.40; repairs \$0.20					2.00
Taxes					2.75
Depreciation of vines: (\$100 to establish; 40 years of productive life)					2.50
Depreciation of trellises: (\$400 to erect; 10 years of productive life)					4.00
Management charge					4.69
Interest (4 per cent on 275)					11.00
Total miscellaneous: per acre					39.94
Total cost: per acre (2-ton yield)					105.92
Cost per ton					52.96
Cost per pound					265 cents

Source: Farm Management Crop Manual; R. L. Adams, University of California Syllabus Series 278, Pages 143 and 144

The conclusion to be drawn from these tables is that even those vineyards producing 1½ tons of dried raisins per year per acre required a price of slightly more than 3¢ per pound, or \$60.00 per ton, to meet total cost of production. The usual vineyard, producing only 1 ton per acre, required a price of 4½¢ per pound, or \$90.00 per ton, to meet total costs of production. A price which would maintain in production only those vineyards with better than the usual or average yields is from an economic standpoint a low price rather than an unreasonably high price.

III.

Purchasing Power Parity Prices.

Producer prices of raisins during the 1940-1941 crop season were substantially below purchasing power parity. Much Federal agricultural legislation has adopted purchasing power parity as a standard. Pertinent provisions of such legislation are:

The Agricultural Adjustment Act of May, 1933, specified in Section 2 thereof that it was the policy of Congress among other things to:

- (1) " * * * reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of agricultural commodities in the base period. The base period in case of all agricultural commodities except tobacco shall be the pre-war period, August 1909-July 1914. In the case of tobacco the base period shall be the post-war period, August 1919-July 1929." (7 U. S. C., Sec. 602(1).)

The Agricultural Marketing Agreement Act, approved June 3, 1937, reenacting, amending, and supplementing certain provisions of the Agricultural Adjustment Act of 1933, as amended, with respect to marketing agreements and orders, provides in Section 2 thereof as follows:

"It is hereby declared to be the policy of Congress—

- "(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing

power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the post-war period, August 1919-July 1929.

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section." (7 U. S. C. Supp. V, Sec. 602.)

Section 8 (c) of said Act provides as follows:

"In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics

of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919-July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture." (7 U. S. C. Supp. V, Sec. 608e.)

The following tables No. 8 through No. 11, inclusive, summarize the information available to the Department with respect to parity prices for raisins and grower prices for raisins for the period January, 1939, to July, 1942

The source of the material on parity prices is the Bureau of Agricultural Economics, United States Department of Agriculture. The source of the material on grower prices is the California Federal-State Market News Service. Grower prices for raisins are based upon those prices most frequently quoted for Thompson Seedless raisins. When trading is not in sufficient volume to be of significance, the Federal-State Market News Service has given no quotation. Quotations given represent the price paid to growers at growers' first delivery points.

TABLE 8

**U. S. INDEX NUMBERS OF PRICES PAID BY FARMERS
INCLUDING INTEREST AND TAXES.**

(1910-14 = 100)

Date	1939	1940	1941	1942
Month	Index Number	Index Number	Index Number	Index Number
(1)	(2)	(3)	(4)	(5)
Jan.	126	128	128	146
Feb.	126	128	128	147
Mar.	126	128	129	150
Apr.	126	128	129	151
May	126	128	130	152
June	126	128	132	152
July	126	127	133	152
Aug.	125	127	135	
Sept.	128	127	137	
Oct.	128	127	141	
Nov.	128	127	143	
Dec.	128	128	143	

Source: January 1939 to August 1942 issues of
Midmonth Local Market Price Reports,
published by Bureau of Agricultural
Economics, United States Department
of Agriculture

Bureau of Markets
California State Department of Agriculture
September 8, 1942

TABLE 9

**CONVERSION OF U. S. INDEX NUMBERS OF PRICES
PAID BY FARMERS, INCLUDING INTEREST AND TAXES**
(Conversion 1910-14 = 100 to 1919-29 = 100)

Date	1939		1940		1941		1942	
Month	1910-14 base	1919-29 base	1910-14 base	1919-29 base	1910-14 base	1919-29 base	1910-14 base	1919-29 base
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Jan.	126	80.9	128	82.1	128	82.1	146	93.7
Feb.	126	80.9	128	82.1	128	82.1	147	94.3
Mar.	126	80.9	128	82.1	129	82.8	150	96.3
Apr.	126	80.9	128	82.1	129	82.8	151	96.9
May	126	80.9	128	82.1	130	83.4	152	97.6
June	126	80.9	128	82.1	132	84.7	152	97.6
July	126	80.9	127	81.5	133	85.4	152	97.6
Aug.	125	80.2	127	81.5	135	86.6		
Sept.	128	82.1	127	81.5	137	87.9		
Oct.	128	82.1	127	81.5	141	90.5		
Nov.	128	82.1	127	81.5	143	91.8		
Dec.	128	82.1	128	82.1	143	91.8		

Source: Columns 2, 4, 6, 8, from Table 8

Columns 3, 5, 7, 9, converted by following method:

1910-14 = 100; 1919-29 = 155.8

Conversion figure published by Bureau of
Agricultural Economics, United States
Department of Agriculture.

Bureau of Markets

California State Department of Agriculture

September 8, 1942

TABLE 10

**PURCHASING POWER PARITY PRICES FOR RAISINS¹ BY MONTHS,
JANUARY 1939 - JULY 1942
(1919-29 base=100)**

(1919-29 average price, dollars per ton for raisins—\$105.80)

Date	1939		1940		1941		1942	
Month	Index number	Parity Price Dollars per ton	Index number	Parity Price Dollars per ton	Index number	Parity Price Dollars per ton	Index number	Parity Price Dollars per ton
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Jan.	81	85.70	82	86.75	82	86.75	94	99.45
Feb.	81	85.70	82	86.75	82	86.75	94	99.45
Mar.	81	85.70	82	86.75	83	87.81	96	101.57
Apr.	81	85.70	82	86.75	83	87.81	97	102.63
May	81	85.70	82	86.75	83	87.81	98	103.68
June	81	85.70	82	86.75	85	89.93	98	103.68
July	81	85.70	81	85.70	85	89.93	98	103.68
Aug.	80	84.65	81	85.70	87	92.05		
Sept.	82	86.75	81	85.70	88	93.10		
Oct.	82	86.75	81	85.70	90	95.22		
Nov.	82	86.75	81	85.70	92	97.34		
Dec.	82	86.75	82	86.75	92	97.34		

Source: Columns 2, 4, 6, 8 from Table 9.

Columns 3, 5, 7, 9 results from multiplication of index numbers from Columns 2, 4, 6, 8 by base price of \$105.80.

Base price of \$105.80 published by Bureau of Agricultural Economics, United States Department of Agriculture re "Parity and Minimum Ceiling Prices for Agricultural Commodities," June 1942.

¹Purchasing power parity prices for raisins are arrived at by multiplying the base period price of raisins (\$105.80 per ton) by the monthly index of things which farmers buy.

Bureau of Markets
California State Department of Agriculture
September 8, 1942

TABLE 11

**SUMMARY OF ACTUAL GROWER PRICES AND PURCHASING POWER
PARITY PRICES FOR RAISINS JANUARY 1939-JULY 1942**

Date		Prices to Growers	Parity Price	Difference	Percentage of Parity
Month	Year	Dollars per ton	Dollars per ton	Dollars per ton	Percent
(1)	(2)	(3)	(4)	(5)	(6)
Jan.	1939	57.50	85.70	-28.20	65.71
Feb.			85.70		
Mar.			85.70		
Apr.			85.70		
May			85.70		
June			85.70		
July			85.70		
Aug.			84.65		
Sept.		50.00	86.75	-36.75	57.63
Oct.		45.00	86.75	-41.75	51.87
Nov.		45.00	86.75	-41.75	51.87
Dec.		42.50	86.75	-44.25	48.99
Jan.	1940	42.50	86.75	-44.25	48.99
Feb.		42.50	86.75	-44.25	48.99
Mar.		42.50	86.75	-44.25	48.99
Apr.		42.50	86.75	-44.25	48.99
May		42.50	86.75	-44.25	48.99
June		43.50	86.75	-43.25	50.14
July		43.50	85.70	-42.20	50.75
Aug.		No quotation	85.70	—	—
*Sept.		55.00	85.70	-30.70	64.17
*Oct.		57.50	85.70	-28.20	67.09
*Nov.		55.00	85.70	-30.70	64.17
*Dec.		60.00	86.75	-25.70	69.16
*Jan.	1941	60.00	86.75	-26.75	69.16
*Feb.		No quotation	86.75	—	—
*Mar.		"	87.81	—	—
*Apr.		"	87.81	—	—
*May		"	87.81	—	—
*June		"	89.93	—	—
*July		75.00	89.93	-14.93	83.39
*Aug.		75.00	92.05	-17.05	81.47
Sept.		75.00	93.10	-18.10	80.55
Oct.		76.50	95.22	-18.72	80.34
Nov.		90.00	97.34	-7.34	92.45
Dec.		92.50	97.34	-4.84	95.02
Jan.	1942	96.50	99.45	-2.95	97.03
Feb.		100.00	99.45	+0.65	100.55
Mar.			101.57		
Apr.			102.63		
May			103.68		
June			103.68		
July			103.68		

*1940-41 Marketing season of period of regulation.

Source: Column 3 from Official Market Information Bulletins of the Federal State Market News Service.

Column 4 from Table No. 16.

Column 5 equals Column 3 minus Column 4.

Column 6 is Column 3 expressed as a percent of Column 4.

Certain important conclusions can be drawn from these tables. It is clearly indicated that during the 1940 crop year the prices which growers received for their raisins at no time approached parity prices. In fact, the average grower price for raisins for the period September, 1940, through January, 1941—the period in which the program affected grower sales of raisins—was approximately 67% of parity prices for raisins, or 33% below parity prices. Based upon purchasing power parity as a standard for determining whether raisin prices during the crop year of 1940-1941 were unreasonably high, it must be concluded that actual prices to growers during the season in question were unduly low rather than unduly high.

IV.

Wholesale Prices of Raisins.

Wholesale prices of raisins at point of origin, like producer prices of raisins, increased at the time that the 1940-41 seasonal marketing program became effective. However, such prices were well within the bounds of fluctuations which were common during periods of no regulations. Wholesale prices did fluctuate during the 1940-41 season but were relatively stable as compared to prices prevailing during seasons of no regulation.

Monthly packer quotations* beginning with September, 1932, serve to give a comprehensive review of point of origin or f. o. b. prices. During the twelve-month period

*Compiled from the California Fruit News, a specialized publication considered by the trade as a reliable source of factual information.

of September, 1940, to August, 1941, inclusive, the monthly average f. o. b. California price of choice grade Thompson Seedless raisins in bulk averaged 4.43 cents per pound as compared with 3.467 cents per pound during the 1939-40 season. The increase of .96 cents, or approximately one cent per pound, was in part due to the marketing regulations and in part to other economic factors. During September-August of 1933-34, prices averaged 4.20 cents per pound, which is practically equal to the 4.43 cents per pound average of 1940-41. In the 1934-35 marketing season, prices were above the 1940-41 monthly average for eight months; in the 1935-36 season, prices were above for five months; in the 1936-37 season, prices were above for the entire twelve months; and during 1937-38, prices for two months were above the 1940-41 average. Since August, 1941, prices have consistently been well above the 4.43 cents per pound average of 1940-41.

Table 12 gives the detail by months of packers' quotations f. o. b. California just referred to.

Attention is also called to the fact that California f. o. b. prices fluctuate rather widely. Reference to Table 12 reveals that prices rose from a low of 3.125 cents per pound in September, 1932, to 4.375 cents in September, 1933, representing a rise of 40 per cent. Later prices rose from a low in May, 1934, of 4.062 cents to a high of 4.875 cents in October, 1934, or a rise of 20 per cent. Following this, prices dropped to 3.416 in August, 1935. The highest point reached during the period under discussion and prior to the 1940-41 season occurred in May of 1937,

which averaged 5.437 cents per pound and is a point 22 per cent above May of 1941. April of 1940 was the last low price point with an average of 3.25 cents per pound; April of 1941 averaged 4.295 cents or 32 per cent higher.

Following the 1940-41 season, prices advanced sharply due to substantial purchases of raisins under Lend-Lease operations and increased purchasing power in the domestic market. The 1941-42 season began with 5.375 cents per pound and advanced to 6.750 cents, or 52 per cent above the 1940-41 average.

In recent seasons, therefore, there were many months during which prices were higher than those prevailing in 1940-41 and many months during which prices were lower than those prevailing during 1940-41. Finally, prices during 1940-41 were relatively stable except for July and August, 1941, when substantial Lend-Lease sales to the Federal Government were being realized and further such sales being anticipated.

TABLE 12

**AVERAGE PACKER QUOTATION, F.O.B. CALIFORNIA, BY MONTHS,
FROM 1932-33 TO 1941-42
FOR CHOICE BULK NATURAL THOMPSON SEEDLESS RAISINS
QUOTATIONS IN CENTS PER POUND¹**

Month	1932-33	1933-34	1934-35	1935-36	1936-37
September	3.125	4.375	4.775	3.890	4.734
October	3.250	4.375	4.875	4.062	4.625
November	3.250	4.375	4.875	4.125	4.625
December	3.250	4.363	4.812	4.125	4.812
January	3.219	4.203	4.765	4.077	4.925
February	3.250	4.250	4.695	4.049	5.141
March	3.250	4.212	4.605	4.359	5.359
April	3.250	4.062	4.532	4.562	5.375
May	3.625	4.062	4.361	4.625	5.437
June	3.750	4.346	4.257	4.625	5.344
July	4.141	4.375	3.772	4.672	5.225
August	4.281	4.406	3.416	4.762	5.049
Average	3.470	4.284	4.453	4.320	5.054

¹Simple average of weekly quotations

Source: California Fruit News, San Francisco, California.

TABLE 12—Continued

**AVERAGE PACKER QUOTATION, F.O.B. CALIFORNIA, BY MONTHS,
FROM 1932-33 TO 1941-42
FOR CHOICE BULK NATURAL THOMPSON SEEDLESS RAISINS
QUOTATIONS IN CENTS PER POUND¹**

Month	1937-38	1938-39	1939-40	1940-41	1941-42
September	4.812	3.672	4.094	4.123	5.375
October	4.550	3.687	3.765	4.234	5.590
November	4.234	3.703	3.593	4.137	5.806
December	4.031	4.012	3.400	4.247	6.203
January	3.775	4.062	3.331	4.231	6.250
February	4.015	4.091	3.329	4.185	6.405
March	4.062	4.187	3.362	4.148	6.750
April	4.062	4.187	3.390	4.295	6.705
May	3.937	4.077	3.250	4.451	6.786
June	3.937	4.037	3.435	4.546	6.750
July	3.737	3.937	3.415	5.182	6.750
August	3.672	3.984	3.375	5.375	
Average	4.077	3.970	3.467	4.430	

¹Simple average of weekly quotations

²No quotations

Source: California Fruit News, San Francisco, California.

V.

Retail Prices of Raisins.

Retail prices of raisins are very stable as compared to wholesale California f. o. b. prices. California f. o. b. prices were set forth in some considerable detail in the preceding section dealing with wholesale prices. Comparable retail prices over a period of time are not readily available. Such prices are not published in official Government sources. For purposes of comparability, the prices must pertain to specific markets and a specific standardized package. Such a series has been made available to the State Department of Agriculture by a large chain organization. This series is shown in Table 13 for 15-ounce size cartons of Thompson Seedless raisins at Washington, D. C., as representative of markets in the eastern part of the United States, and at San Francisco as a representative market on the Pacific Coast. A review of the tabulation reveals at once that prices are the same for many months in succession, and when changes occur, they tend to be one-half cent per pound in magnitude.

At Washington, D. C., the prevailing retail prices of 15-ounce carton-pack Sunmaid Nectars (Thompson Seedless raisins) were 7.5 cents for the 26-month period August, 1938, to September, 1940, inclusive. In October the Washington price rose to 8.0 cents and remained at that level to July, 1941, at which time it advanced to 8.5 cents. In the winter and spring months of 1942 the price advanced and was frozen at 10.0 cents per carton. Except for a decline in June of 1940, prices at San Francisco show a similar tendency.

A direct comparison of retail prices at Washington, D. C., and San Francisco, and f. o. b. California for the 1939-40 and 1940-41 seasons is shown in Table 14. At-

tention is called to the fact that the 1939-40 season was without State regulation, and that the 1940-41 season was subject to stabilizing marketing regulations.

Retail prices of Muscat raisins tend to run 1.0 cent per carton higher than Thompson Seedless raisins. Except for the one cent differential, prices of Muscats reflect the same degree of stability as retail prices of Thompson Seedless raisins. (See Table 13.)

The analysis of packers' quotations in the previous section dealing with wholesale prices, together with the direct comparisons in this section, leads to the following conclusions: (1) Packers' prices f. o. b. California tend to fluctuate relatively widely; (2) California f. o. b. prices during the 1940-41 season, which is the season of control in question, were higher than in the 1939-40 season, but not higher than certain prices of other recent seasons; (3) retail prices are very stable as compared to f. o. b. prices; (4) retail prices during the 1940-41 season were not unduly enhanced.

TABLE 13

**RETAIL PRICES OF RAISINS AT WASHINGTON, D. C. AND
SAN FRANCISCO**

Date	15-oz. Sunmaid Nectars		15-oz. Sunmaid Seeded	
	Wash. D. C.	San Francisco	Wash. D. C.	San Francisco
1938				
July	.10	.075	.10	.09
August	.075	.07	.09	.08
Sept.	.075	.07	.09	.08
Oct.	.075	.07	.09	.08
Nov.	.075	.065	.09	.08
Dec.	.075	.065	.09	.08
1939				
Jan.	.075	.065	.09	.08
Feb.	.075	.065	.09	.08
March	.075	.07	.09	.08
April	.075	.07	.09	.08
May	.075	.07	.09	.08
June	.075	.07	.09	.08
July	.075	.07	.09	.08

TABLE 13—Continued
RETAIL PRICES OF RAISINS AT WASHINGTON, D. C. AND
SAN FRANCISCO

	15-oz. Sunmaid Nectars		15-oz. Sunmaid Seeded	
	Wash. D. C.	San Francisco	Wash. D. C.	San Francisco
Aug.	.075	.07	.09	.08
Sept.	.075	.07	.09	.08
Oct.	.075	.07	.09	.08
Nov. 15	.09	.07	.09	.08
Dec. 14	.075	.07	.09	.08
1940				
Jan.	.075	.07	.09	.08
Feb.	.075	.07	.09	.08
March	.075	.06	.09	.075
April	.075	.06	.09	.075
May	.075	.06	.09	.07
June	.075	.055	.085	.07
July	.075	.055	.085	.07
Aug.	.075	.055	.085	.07
Sept.	.075	.055	.085	.07
Oct.	.08	.055	.09	.07
Nov.	.08	.055	.09	.07
Dec.	.08	.055	.09	.07
1941				
Jan.	.08	.055	.09	.07
Feb.	.08	.055	.09	.07
March	.08	.06	.09	.07
April	.08	.06	.09	.07
May	.08	.06	.09	.07
June	.08	.06	.09	.07
July	.085	.06	.095	.07
Aug.	.085	.06	.095	.08
Sept.	.085	.07	.095	.08
Oct.	.085	.07	.095	.08
Nov.	.085	.075	.095	.095
Dec.	.085	.085	.095	.095
1942				
Jan.	.09	.085	.10	.095
Feb.	.09	.085	.105	.10
March	.095	.085	.11	.10
April	.11	.085	.12	.10
May	.10	.09	.11	.11
CEILING	.10	.09	.11	.10

Source of data: Safeway Stores Incorporated, Oakland, California.
 Letter dated September 25, 1942.

TABLE 14

CALIFORNIA F. O. B. PRICES COMPARED WITH RETAIL PRICES
OF RAISINS AT SAN FRANCISCO AND WASHINGTON D. C.

Month	California f. o. b.	San Francisco Retail	Washington, D. C. Retail
(1)	(2)	(3)	(4)
	per pound	per carton	per carton
1939-40			
September	.0409	.07	.075
October	.0376	.07	.075
November 15	.0359	.07	.090 ¹
December 14	.0340	.07	.075
January	.0333	.07	.075
February	.0333	.07	.075
March	.0336	.06	.075
April	.0325	.06	.075
May	.0326	.06	.075
June	.0343	.055	.075
July	.0341	.055	.075
August	.0338	.055	.075
1940-41 ²			
September	.0412	.055	.075
October	.0423	.055	.080
November	.0414	.055	.080
December	.0425	.055	.080
January	.0423	.055	.080
February	.0418	.055	.080
March	.0415	.060	.080
April	.0430	.060	.080
May	.0443	.060	.080
June	.0455	.060	.080
July	.0519	.060	.085
August	.0538	.060	.085

¹This figure very likely represents the price of Sunmaid seeded raisins (Muscats). The price of that class of raisins was .09 during November.

²Season under stabilizing marketing regulations.

Source of data:

Column 2 taken from Table 12.

Columns 3 and 4 Safeway Stores Inc., Oakland, California, Letter dated September 25, 1942.

VI.

Season of 1941-1942.

At the beginning of the 1941-1942 marketing season, the Agricultural Marketing Administration of the United States Department of Agriculture indicated that Lend-Lease requirements of raisins would be heavy. The Agricultural Marketing Administration advised that grower prices of raisins would be supported at levels higher than those prevailing in 1940-1941.¹ The economic situation of the industry was therefore not such as to warrant the application of compulsory stabilization control. The "economic stability" of the industry was not "imperiled" and no program therefore was put into effect.

VII.

Summary and Conclusions.

Definite conclusions may be drawn from the foregoing analysis pertaining to the Marketing Program for Raisins, as Amended, effective and operative under the authority of the Agricultural Prorate Act of the State of California. These conclusions are:

(1) The economic stability of the raisin industry, particularly as it applied to producers, was imperiled by marketing conditions prevailing at the beginning of the 1940-41 season.

¹As the season advanced the Agricultural Marketing Administration gave assurance of the following rates per ton:

Muscat raisins	\$75.00
Thompson Seedless raisins	75.00
Sultana raisins	70.00

(2) A 1940-41 Seasonal Marketing Program for raisins, involving stabilization and surplus pools, was authorized, developed, and made effective under the Agricultural Prorate Act of the State of California.

(3) That the Agricultural Prorate Act of the State of California sets forth specific legislative safeguards and administrative procedures in the public interest.

(4) That the Federal Government, through the Commodity Credit Corporation of the Reconstruction Finance Corporation, and the Agricultural Marketing Administration of the United States Department of Agriculture, cooperated with State Agencies in the effective operation and administration of the 1940-41 Seasonal Marketing Program for Raisins.

(5) Prices to producers were increased and tended to be stabilized under the operations of the program as compared with producer prices of the previous season.

(5) Prices to producers as increased under the program were (a) considerably below purchasing power parity prices, and (b) failed to equal total costs of production based on usual yields per acre.

(7) Packers' f. o. b. California quotations of raisins during the 1940-41 season were higher than prices of certain previous seasons and lower than certain previous seasons and lower than prices prevailing since; and that by comparison with other recent seasons, 1940-41 prices were not unduly enhanced.

(8) Retail prices of raisins are very stable for long periods of time; retail price changes tend to be less both in absolute terms and in terms of percentages than changes in packers' quotations f. o. b. California.

(9) Retail prices of raisins were not unduly enhanced, if at all, by the operations of the program as compared to retail prices that might otherwise have prevailed.

(10) The economic situation prevailing in the raisin industry at the beginning of the 1941-42 season was such as to bring into play the legislative limitations and safeguards provided in the Agricultural Prorate Act, and no compulsory marketing control program was made effective.

In the Supreme Court

OF THE
United States

Office - Supreme Court, U. S.

MAY 4 1942

CHARLES ELMORE CHAPLEY
CLERK

OCTOBER TERM, 1941

No. 1040 46

W. B. PARKER, Director of Agriculture,
AGRICULTURAL PRORATE ADVISORY COM-
MISSION; RAISIN PRORATION ZONE No. 1,
PROGRAM COMMITTEE, W. B. PARKER,
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FINI, ALEX BERG, MESROB MIRIGIAN,
MELCHIOR HANSEN, A. L. DAVIDSON, W.
J. CECIL and J. C. HARLAN,

Appellants,

vs.

PORTER L. BROWN,

Appellee.

Brief of Appellee

**DESIGNATION OF ADDITIONAL PARTS OF RECORD
TO BE PRINTED.**

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STATEMENT OF THE CASE.

Appellee (plaintiff in the District Court) has not yet received appellants' brief. We wish, therefore, affirmatively to show wherein the record supports the decision of the trial court. In this connection, Rule 52 (a) of Rules of Civil Procedure for the District Courts of the United States provides in part:

"Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

(a) THE DISTRICT COURT HAD JURISDICTION.

The law generally applicable to this phase of the case has been stated by this court as follows:

"Whether a state statute is regulatory or prohibitory, when a bill is filed against its enforcement under section 266 of the Judicial Code, the matter in controversy is the right to carry on business free of the regulation or prohibition of the statute. Where the statute is regulatory the value of the right to carry on the business, as was said in *McNutt v. General Motors Acceptance Corporation*, supra, may be shown by evidence of the loss that would follow the enforcement of the statute. And this loss may be something other than the difference between the net profit free of regulation and the net profit subject to regulation. * * * The value of the matter in controversy may be at least as accurately shown by proving the additional cost of complying with the regulation."

(*Buck v. Gallagher*, 307 U. S. 95, 100, 59 S. Ct. 740, 742.)

The trial court in the case at bar found (R. 52):

"That the State of California, through its duly authorized officers, is attempting to enforce the provisions of a proration program for raisins (hereinafter sometimes called the program) prescribed under the authority of the California Agricultural Prorate Act (Chapter 754, California Statutes 1933), as amended (hereinafter sometimes called the Act), and is claiming penalties in the amount of \$13,000.00 against the plaintiff; that the plaintiff, since the commencement of the raisin crop season of the year 1939, has been and is now engaged in the business of producing, buying, packing and selling sun-dried raisins produced in said zone, including raisins produced in the crop year 1940; that the plaintiff on September 7, 1940, had orders for the delivery of sun-dried raisins produced in said zone in the year 1940 which he could not fill without complying with the seasonal program for raisins hereinafter referred to, and that defendants in enforcing said program have directly interfered with and obstructed plaintiff's said business and thereby damaged the plaintiff in a sum in excess of \$3,000.00, exclusive of interest and costs, and that the matter in controversy herein exceeds, exclusive of interest and costs, the sum of \$3,000.00."

Appellee testified that the prorate enforcement officials were maintaining against him in a State court actions for civil penalties, amounting to \$13,000.00, for violations of the prorate program. (R. 138.) Accrued penalties constitute "matter in controversy." *Healy v. Ratta*, 292 U. S. 263, 54 S. Ct. 700.

The prorate program went into effect September 7, 1940. (R. 18.) In May, 1940, appellee, as a packer,

had entered into contracts for the sale of 762 $\frac{1}{2}$ tons of raisins at \$60.00 per ton. (R. 74.) Appellee produced 200 tons on his own ranch, leaving 562 $\frac{1}{2}$ tons which he had to purchase in the open market to fill these contracts. (R. 76.) The market price of raisins to the packer was \$45.00 per ton immediately preceding the adoption of the prorate program. (R. 76.) Immediately after that date the price jumped to \$55.00 per ton, an increase of \$10.00 per ton. (R. 76.) That this increase was caused by the prorate is shown by a Proration Program Bulletin issued February 8, 1941 by the Zone, which stated that if it had not been for the program, the price would have been "not over \$40.00 per ton". (Plaintiff's Exhibit 5, R. 75.) Therefore, at the time of the filing of this action, appellee was faced with a loss of \$10.00 per ton on 562 $\frac{1}{2}$ tons, or a total of \$5625.00.

Appellee testified that under the program the cost of buying raisins increased \$1.50 per ton. (R. 78.) This was true of the cost to all the packers. (R. 101.) On the basis of his experience in the raisin business and the fact that he had sold 2000 tons during the year 1939, appellee anticipated a business of 3000 tons during the year 1940. (R. 78-79.) Operating under the program, it would have cost him \$4500.00 more to buy these 3000 tons of raisins than it would have cost if the program had not been in effect.

Appellee plead that his rate of profit per ton of raisins shipped was from \$5.00 to \$12.00. (R. 4.) Apparently there is no evidence on that subject in the record. However, it is sufficient under the rule stated

in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U. S. 283, 288, 58 S. Ct. 586, 590, that the damage in good faith be claimed. Appellee in fact was able to purchase at various times in violation of the program a total of 700 tons of raisins (R. 92), in addition to the 200 tons which he produced. He, however, lost a minimum of \$5.00 per ton profit on 2100 tons anticipated business, or \$10,500.00.

We respectfully submit, therefore, that the jurisdiction of the District Court was established.

(b) THE PRORATE DIRECTLY OBSTRUCTED APPELLEE'S INTERSTATE BUSINESS.

The trial court found (R. 59):

"That plaintiff as a packer contracts for delivery of a very large percentage of the raisins he handles directly into interstate and foreign commerce; that plaintiff on September 7, 1940, had substantial orders for out of state delivery of raisins which he could not fill by purchase of 'free tonnage' and could not fill at all because of said pools without complying with said program; that defendants in enforcing said program have directly and substantially interfered with and obstructed plaintiff's said business and have directly and substantially burdened interstate and foreign commerce."

In Report No. 134, 2d Series, of the U. S. Tariff Commission, entitled: "Grapes, Raisins and Wines", published in 1939, the following appears at page 142:

"Commercial production of raisins in the United States is confined to California. There has been a small production in Arizona, New Mexico, and Utah but it has been too insignificant to be recognized by the trade, and statistics of production are not available. In California the industry is located in the upper San Joaquin Valley, in the central part of the state, principally in Fresno County, but spreads into Tulare, Kings, Madera, and other adjoining counties."

The extent of the raisin business is illustrated by the business of Sun Maid Raisin Growers, one of the large packers. This concern operates through more than 100 brokers in the United States, and in peacetime it has four brokers abroad and a London subsidiary which handles the business in Europe. (R. 118.)

The fact stipulation entered into by the parties read in part as follows (R. 16):

"9. When such raisins are so prepared for commercial sale and delivery, the packer delivers the same to jobbers, wholesalers, brokers, distributors, and dealers for resale and distribution to the public. Such raisins are ultimately consumed both within and without the State of California, but 90-95% of the raisins consumed as raisins, and for human consumption are ultimately consumed outside of the State of California."

Counsel for appellants conceded that the raisins handled by appellee took the same course. (R. 80-81.)

Appellee testified that he ships 90% of the raisins handled by him out of the state and that the same is true of the other packers. (R. 154-155.) His contracts call for shipment f.o.b. Kerman, California, which is where his plant is located, about 15 miles from Fresno. (R. 152.) He retains title until the goods are paid for and often the goods arrive at their destination outside the state before the payment is made. (R. 143.) In most cases appellee receives shipping instructions after the contract is made, the contracts themselves not stating where the goods are to be shipped to. In some instances, however, the shipping instructions come with the order. (R. 157, 163.)

Appellee testified that there were not available sufficient of the 30% free tonnage raisins to enable him to fill his contracts. (R. 78.) That was because there was no money yet available under the prorate program and the growers were therefore not inclined to sell or deliver to the prorate. (R. 87-90.) The program called for payment by the prorate to the grower on delivery. (R. 18.) The grower could not dispose of his 30% "free tonnage" until 70% of his crop was delivered to the prorate. (R. 19.) There was a hold-over of 70,000 tons of 1939-crop raisins, but these were likewise unavailable to appellee because they were in the hands of other packers who would not sell to appellee at the sweat-box price of three cents per pound, but would sell only at the packed raisin price of four cents per pound. (R. 100.) The prorate did not permit the sale of raisins in the 50% stabilization pool until January 1, 1941 (Plaintiff's Exhibit

7, R. 75), whereas appellee's contracts required delivery by him from October to December, 1940. (Plaintiff's Exhibits 1-4, 6, 8, 9, R. 72-76.) The raisins in the 20% surplus pool were likewise unavailable to appellee because the program directed that they be kept out of normal marketing channels. (R. 55.)

Appellee submits, therefore, that appellants have directly obstructed appellee's interstate business.

**(c) THE PACKER HAS NO PART IN THE
PRODUCTION OF RAISINS.**

The trial court found (R. 57):

"That the producer or farmer makes sun-dried raisins by placing the harvested bunches of ripe grapes upon trays laid upon the ground in the vineyard in such a way that the grapes are dried into raisins by the direct rays of the sun; that during the drying period the farmer turns the bunches of the grapes on the trays so that all sides of the grapes are exposed to the sun, thus securing a uniformity in drying; that when the grapes are properly dried, they are placed in 'sweat' boxes where the moisture retained in the dried grapes automatically equalizes toward the right proportions, completing the curing of the grapes into raisins. Such process is entirely accomplished on the premises where the grapes are grown, and when properly done, the grapes have been entirely dried and cured and are a wholesome food and sound article of commerce. They are then substantially ready for market as raisins. The process of cleaning, stemming, cap-

stemming, seeding (muscats only), grading, sorting and packaging in various sized containers, which is not uniform in packing plants, tends to make the raisins more desirable commercially and thus create a greater demand for them in the market, but is not essential to production."

Judge Yankwich, in his dissenting opinion, on the other hand, states that raisins are unfit for human consumption until the packer processes them. (R. 51.)

The cleaning, stemming, grading, sorting and packaging of raisins by the packers is performed in varying ways. In the large packing plants many operations are performed which are not duplicated in other plants (R. 115), and the operation takes approximately eight to ten minutes. (R. 107.) In the smaller plants half minute to a minute suffices. (R. 130.)

That the operation performed by the packer in no way changes the nature of the product is illustrated by the testimony of Mr. E. L. Chaddock as follows (R. 125-130):

"A. Well, perhaps it would save the court's time if I would describe, as nearly as I can, the processing in the early days, or the packing of raisins in the early days, and how it has changed down to the present time.

* * * * *

A. The process of stemming raisins was simply to dump them into a hopper; they went through a rapidly revolving cylinder against a concave, a wire which knocked off the stems. Then they were graded, in those days, the Muscats into four grades, as described yesterday by Mr.

Hines, and they went immediately into the box, which was nailed up, and loaded onto cars. That was the entire process.

* * * * *

Q. At that time was there any cleaning or washing or anything of that sort?

A. No, there wasn't.

Q. Was there any sugar test or anything of that sort?

A. None.

Q. Was there any fumigating?

A. None.

Q. When was the first fumigating brought into the industry?

A. Well, I think, in a general way, it wasn't until possibly ten or twelve years ago. Possibly I am off a year or two or three, one way or the other, on that.

Q. Are you familiar with what is known as the dried pack of the American Seedless Raisin Company?

A. Yes.

Q. Just describe to the court that product.

A. * * * their process was to simply dump the raisins into the hoppers. I have described; they went through the stemmer and the cone and cap stemmer, and then went directly into the 25 pound boxes; or in case they were put in cartons they were simply put in the cartons by hand—dumped in by hand, without any processing whatever or any washing or any cleaning, except what the cap stemmer did, which was supposed to knock off the sand or any dirt on a properly cured raisin, on a standard raisin, and they went into the carton ungraded, ungraded as to size, where today we have them graded in Fancy,

Choice, and Midget Thompson; but in those days they were ungraded.

Q. Mr. Chaddock, with respect to the merits of the raisins that have gone through this very minute detail or preparation and the raisins sent out in the dry pack, which has the superior quality?

A. I would say the dry pack.

A. It keeps better. A standard raisin, which is properly cured needs no processing whatever, in the true sense of processing. And when you wash a raisin, or any process that is put into a raisin, that has a deteriorating effect on that raisin, rather than a beneficial effect, for this reason: A raisin has a natural protective covering—now, that is somewhat technical—it has a natural protective coating called the bloom on the raisins; I imagine sort of an oil protective coating, a natural raisin oil, which protects the raisin and closes the pores. When you wash that bloom off and wash that protective coating off with water you have opened up the pores of the raisin, allowing the oxygen to get into the interior of it, and inside of 30 to 60 days that raisin begins to deteriorate. Many times if they use a little too much water it causes a crystallization of the raisin, which is very objectionable to the consumer and to the trade. And frequently a raisin which has been washed is apt to ferment; sometimes they will sour; but the keeping quality is very much reduced. A natural raisin on the stem will keep, if it is properly cured, from two to three years; and sometimes it is very difficult to tell an old crop of raisins from a new crop of

raisins; but where you wash them it reduces that keeping quality.

* * * * *

Q. Would you mind describing very briefly that used by packers like Mr. Brown?

A. I have been in Mr. Brown's plant. All he does is take the raisins off the wagon, put them onto a four-wheeled truck, wheel them over to the hopper of the stemmer, they whiz through the stemmer and cap stemmer, of which one of them is a cylinder, a rapidly revolving cylinder against a concave that sets about an inch from the cylinder, which knocks off the stems. There is a fan that blows the stems out; then they go into the second recleaner or rotating cylinder and that knocks off the little bit of a cap stem, which in some cases is left on; then they go directly into a 25-pound box, which is nailed up if it is a wooden case, or in a fibre case which is glued and immediately trucked over into the cars. That is the operation.

Q. Does he put them through a grading process?

A. Yes. Sometimes he grades them and sometimes he doesn't. It is according to how his orders come in. Frequently they are ordered out ungraded. Sometimes they are ordered graded.

* * * * *

Q. Mr. Chaddock, you are familiar with the matter of handling layer Muscats, are you?

A. Yes.

Q. Just how are they handled?

A. They are brought in from the farmer usually today; he has what is known as trays. The grower dumps three or four trays into a box, then lays a sheet of paper in there and dumps three or four more trays in until the box

is full. Those raisins are supposed to stand in the field and equalize as to their moisture content. Some bunches will have some under-cured berries and some over-cured berries on the bunch; and the proper method of the grower—it is if he is a careful grower—is to let those raisins stand for some weeks so that the moisture of the big berries will absorb into the dry berries and into the stem, so as to make the stem pliable so it can be handled. If this is not done the stems are very brittle, and you almost look at them cross-eyed and they will fall off the stem.

Q. When they get into the hands of the packer how does he handle them?

A. He simply places that sweatbox before a 20-pound box and lifts the raisins out of the sweatbox and places them into the 20-pound box.

Q. Do they ever steam them or do anything to make the stems less brittle?

A. Yes, they do; if the raisin is not properly cured they do. They are sometimes forced to do that by improper curing or improper sweating of the raisin by the grower. If the grower holds his raisins back until they are properly cured, they are not steamed, or no process whatever."

Mr. Chaddock also testified (R. 134):

"A. Under the change in the system of packing with the new Philadelphia recleaner, they had a tendency to gum up, and you can't operate the Philadelphia cleaner today without the use of water. That is the primary reason for using water. It isn't to wash the raisin. A properly cured raisin, a standard raisin needs no washing. It has been used for years and years without washing."

The program itself refers to the grower as the "producer". (R. 18.)

It is apparent that the packer in no way changes the nature of the raisin. Aside from packaging and sometimes fumigating the goods, he does nothing to them which the housewife cannot do in her own kitchen. It is a matter of common knowledge that the finest raisin is one picked off the tray in the field and eaten on the spot.

However, even if it could be said that the packer has a part in the production of the raisin, we submit that that would have no effect on this case, for the program does not purport to regulate what the packer does to the raisin, it simply obstructs his purchasing the raisin in the open market.

(d) HOW THE RAISIN PRORATE PROGRAM OPERATES.

The portions of the Agricultural Prorate Act (page 754, Statutes of 1933, as amended, Deering's General Laws, Act 143a), which are most material in the consideration of the prorate program, are Sections 19.1 and 20. Section 19.1 reads in part as follows:

"The program committee for the purpose of minimizing the effect of surpluses or other adverse market conditions may be empowered in any program in any one or more of the following particulars:

(a) Operation of pools. To establish and maintain either surplus or stabilizing pools, or both, which pools shall be authorized to receive

from each producer from time to time his uncertificated portions of the prorated commodity and market the same by grades for the account of the producer when it can be advantageously disposed of either in its original or converted state. The program committee shall designate the quantity that shall be placed in a stabilizing pool and the quantity that shall be placed in the surplus pool. In operating any such stabilizing or surplus pool, a program committee may fix grading, packing and servicing charges to be assessed against such commodities received by the pool or pools and requiring such handling. *The program committee shall have title to all such pools and shall handle all commodities received by a pool and account for the same to the producers beneficially interested on a pooled basis. Each producer delivering his uncertificated tonnage to a pool shall be credited for his proportionate share of all tonnage so delivered.*"

Section 20 reads in part as follows:

"After any marketing program has been formulated and has been approved as provided in this act, the agent for the zone shall assume the administration of the program and any subsequent modification thereof and the issuance of proration certificates thereunder. Such certificates shall be divided into primary and secondary certificates. Each producer shall be entitled to one primary certificate which may indicate the quantities of the commodity, for which the program has been instituted which the producer named in such certificate shall be entitled to harvest or otherwise prepare for market and delivery into the primary channels of trade. Said primary

certificates may also indicate from time to time the number of secondary certificates theretofore issued under it. Secondary certificates shall be numbered consecutively and shall be used to control the time and volume of harvesting or other preparation for disposal. Such secondary certificates shall accompany all deliveries of the prorated commodity by producers into a primary trade channel."

"Primary Channel of Trade" is defined in Section 2 of the Act as follows:

"The phrase 'primary channel of trade' shall mean that transaction in which the producer or his cooperative marketing association loses physical possession of the commodity through the sale thereof or other disposition commercially."

The program which appellants seek to enforce does not purport to control the production or harvest of grapes. It deals only with the severed grape, dried and cured into raisins. It does not limit the acreage which may be cultivated or the quantity of grapes that any grower may pick or dry. The program is entitled: "*Marketing Program for Raisins, as Amended*", and is implemented by a "*Seasonal Marketing Program*". (R. 18.)

The program provides in substance (R. 18):

A. Each producer of 1940 crop raisins shall deliver 20% of his production of 1940 crop standard raisins into a surplus pool established by the Zone and 50% of his said 1940 crop production of standard raisins into a stabilization pool before receiving or being entitled to receive a sec-

ondary certificate authorizing sale and delivery to a handler of 30% of his 1940 crop raisin production, which 30% is the free tonnage of each producer.

B. No producer may sell or deliver to any handler any 1940 crop raisins until and unless he has fulfilled said surplus and stabilization requirements and has been issued a secondary certificate authorizing the sale and delivery of a stated tonnage (being the free tonnage) of his 1940 crop raisins.

C. No handler shall receive or process any 1940 crop free tonnage raisins unless said raisins at the time of delivery to him are accompanied by a secondary certificate authorizing the delivery of said raisins to a handler.

This shows that the program takes the raisin away from the producer by compulsion *after* the raisin has been harvested; and thereafter the producer has absolutely nothing to say as to how it shall be disposed of.

The program provides (Article V; R. 55):

"Sec. 4. *Disposal of Surplus Pool.* Pursuant to this Section 4, the Committee shall sell or authorize the sale of surplus pool raisins as soon as practicable after delivery of same to the Committee or to any agency authorized by the Committee to receive such raisins; *provided, however,* that none of the standard raisins in such pool shall be sold or otherwise disposed of prior to January 1 of the marketing season in which such pool is established. The sale of such raisins shall be made in accordance with the methods

and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins. The Committee shall make provision whereby a producer who delivers raisins to a surplus pool may, within the shortest time practicable, buy the same or an equivalent grade of raisins, subject to regulations to be established by said Committee.

Surplus pool raisins shall be sold only for assured by-product and other diversion purposes, and shall not be sold into normal marketing channels."

Thus, twenty per cent of the raisin crop is entirely withdrawn from the normal channels of interstate commerce.

✓ The program further provides (Article VI; R. 55):

"Sec. 4. *Disposal of Stabilization Pool.* Pursuant to this Section 4 the Committee shall sell or authorize the sale of stabilization pool raisins as soon as practicable after delivery of same to the Committee, or to any agency authorized by the Committee to receive such raisins, in such manner as to maintain stability in the markets and to dispose of such raisins. The procedure relative to the disposition of such raisins and the provisions of the contract of sale shall be established by the Committee with the prior approval of the Director; *provided, however*, that all packers of record with the Program Committee shall be given uniform notice of offers to sell stabilization pool raisins and, if allocation of tonnage among packers becomes necessary, such allocation shall be made under uniform

rules, which are equitable as to all packers participating in offers to purchase, as formulated by the Committee and approved by the Director. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins; *provided, however*, that no sales of raisins from a stabilization pool, other than such raisins which are subject to special loaning or pooling arrangements with the Federal Government, shall be made at less than the prevailing market price for raisins of the same variety and grade on the date of sale.

Stabilization pool raisins shall be sold only into normal marketing channels."

Under the foregoing section of the program, fifty per cent of the raisin crop may be withheld from interstate commerce and is allowed to leave the state only at such times, in such quantities, and at such prices as the program committee shall fix.

Thus, seventy per cent of the crop may be kept out of interstate and foreign commerce; and as to the remaining thirty per cent, it may be sold only after delivery of 70% of the crop to the prorate pools and payment of \$2.50 per ton of the 30%. (R. 19.)

The foregoing shows that appellants assume complete control of this interstate industry and is attempting to enforce an embargo on the shipment of raisins.

ARGUMENT.

1. APPELLEE IS NOT ESTOPPED FROM ATTACKING CONSTITUTIONALITY OF THE RAISIN PRORATE PROGRAM.

A raisin prorate program was established for the year 1938 under the 1933 Prorate Act as amended in 1935. (Act 143, Deering's General Laws, California, 1937, p. 60.) At that time Brown was engaged in the growing and producing of raisins but was not a packer. In the year 1939 there wasn't any raisin prorate program. In 1939 Brown commenced operating as a packer of raisins and ever since has been both a grower, packer and shipper of raisins. The Agricultural Prorate Act was amended in many respects in 1939. (Deering's General Laws, Act 143, 1939, p. 993.) The last two sentences of paragraph 16 of the fact stipulation read (R. 20-21):

"That the 1938 seasonal marketing program for raisins differed from the 1940 seasonal program in that the 1938 seasonal program did not have a stabilization pool requirement and had a 20% surplus pool, the same as the 1940 seasonal program."

The 1939 amendment made many changes in the Agricultural Prorate Act. Some new sections were added, and the more material alterations were:

1. The Agricultural Prorate Commission was abolished and an Advisory Commission created in its place. (Section 3.)

2. The administration of the act was taken away from the commission and given to the director. (Section 6; see also, Sections 9, 22, and 23.)

3. The exercise of its powers by the program committee is made subject to the approval of the director. (Section 22.)

4. A large group of counties was excluded from grape proration. (Section 8.5.)

5. In 1937 when the first program was adopted, there was no provision whatever for a stabilization pool; the only pool authorized being a surplus pool. (Section 19.1.)

6. Whereas the original program was put into effect by the assent of 65% of the producers listed by the commission, the present program was put into effect as an amendment to the original program and this was done under the wholly novel method set up in Section 18.1 of the 1939 Act, whereby the program went into effect automatically, unless 40% of the producers listed by the commission cast a negative ballot.

7. Section 18 of the Act in 1937 gave the packers two members on the program committee. Section 15 of the law as it now stands denies the packers representation on the program committee unless the producer members of the committee request that the director appoint two packers. There are no packers on the present program committee.

As Brown had withdrawn from the program and refused to participate in the same in any manner in 1940, and as both the program and the law had been amended, he is not estopped from attacking the constitutionality of the Agricultural Prorate Act as implemented by the program.

In 16 C. J. S. 187 (Constitutional Law, Sec. 89), it is stated:

"the fact that one complied with and favored the enforcement of an act prior to the passage of an amendment thereto, which amendment made a material change, does not estop him from asserting the unconstitutionality of the act as amended."

There are other equally strong reasons why appellants' claim of estoppel cannot prevail. The principle does not apply after one ceases to accept the benefits of a statute (or program). In *Southern Motor Ways, Inc. v. Perry*, 39 Fed. (2d) 145, the court said at page 148:

"It has been urged that the complainant has applied for and obtained a certificate under the act and conducted business under it, and expressly agreed to regulation by the act and the commission, and is therefore estopped to attack the regulation. One cannot, in the same proceeding, both assail and rely upon a statute, nor can he deny its validity while clinging to benefits under it. But when he entirely repudiates it, although previously having endeavored to comply, and the statute is being used wholly to his present disadvantage, it may be assailed as unconstitutional. *Buck v. Kuykendall*, 267 U. S. 307, 45 S. Ct. 324, 69 L. Ed. 623, 38 A. L. R. 286. It would be unfortunate practically to have some of these carriers regulated through estoppel and others unregulated because of a successful attack upon the regulations."

One is not estopped to show the unconstitutionality of an act where his prior compliance thereto has

been under compulsion. *Hart Coal Corp. v. Sparks*, 7 F. Supp. 16, 19 (reversed on other grounds, 74 Fed. (2d) 697); *Union Bank v. Moore*, 204 Pac. 361 (Montana); *Abbie State Bank v. Bryan*, 282 U. S. 765, 75 L. Ed. 690, 34 Columbia Law Review 1495; *Union Pacific v. Public Service Commission*, 248 U. S. 67; *U. S. v. Seven Packages of Tea*, 126 Fed. 224.

An estoppel to show unconstitutionality, like any other estoppel, must be based upon prejudice to the other party resulting from the acts claimed to create the estoppel. *Ashwander v. T. V. A.*, 56 Sup. Ct. 466, 472; *Van Camp Sea Food Co. v. Newbert*, 76 Cal. App. 545, 554.

The weakness of appellants' claim of estoppel is illustrated by the fact that the point was not argued in the District Court. (R. 44.)

2. THE AGRICULTURAL PRORATE ACT AS IMPLEMENTED BY THE RAISIN PROGRAM VIOLATES THE COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES.

We shall first discuss the application of the commerce clause to the instant situation and, in that connection, we shall first call attention to certain decisions of the United States Supreme Court which hold that a state cannot prevent citizens from engaging in interstate commerce. In *West v. Kansas Natural Gas Company*, 221 U. S. 229, 31 Sup. Ct. 531, 55 Lawyers' Edition, 716, the facts were that the State of Oklahoma had passed a law forbidding the shipment of oil and gas from its wells into other states.

The Supreme Court of the United States, in disposing of the case, said:

"A final decree was entered, declaring that the statute referred to 'is unreasonable, unconstitutional, invalid, and void, and of no force or effect whatever', and a perpetual injunction was awarded against its enforcement.

The basis of the decree of the court was that expressed in its opinion ruling upon the demurrers; to wit, that the statute of Oklahoma was prohibitive of interstate commerce in natural gas, and in consequence was a violation of the commerce clause of the Constitution of the United States, and that being, as the court said, its dominant purpose, it would, if enforced against complainants 'invade their rights as guaranteed by the 14th Amendment of the National Constitution' and also the Constitution of the state. 172 Fed. 545.

These conclusions are contested, and it is asserted that *the statute's 'ruling principle is conservation, not commerce; that the due process clause is the single issue.'* And due process, it is urged, is not violated, because the statute is not a taking of property, but a regulation of it under the police power of the state. The provisions of the act, it is further insisted, are but exercise of the police power to conserve the natural resources of the state, and as means to that end the right of eminent domain is forbidden to foreign corporations engaged in transporting gas from the state, and the use of the highways of the state confined to pipe lines operated by domestic corporations, in order that gas may be transmitted only between points within the state.

And such exercise of power, it is contended, does not regulate interstate commerce, but only affects it indirectly.

A paradox is seemingly presented. Interstate commerce in natural gas is absolutely prevented,—prohibited, in effect, for we think it is undoubted that pipe lines are the only practical means of gas transportation, and to prohibit interstate commerce is more than to indirectly affect it. * * *

The statute presents no embarrassing questions of interpretation. It was manifestly enacted in the confident belief that the state had the power to confine commerce in natural gas between points within the state, and all of the rights conferred on domestic corporations, all of the rights denied to foreign corporations, were means to such end. And the state having such power, it is contended, if its exercise affects interstate commerce, it affects such commerce only incidentally. In other words, affects it only, as it is contended, by the exertion of lawful rights, and only because it cannot acquire the means for its exercise.

The appellant makes a broader contention. The right to conserve, or rather, the right to reserve, the resources of the state for the use of the inhabitants of the state, present and future, is broadly asserted. 'The ruling principle of the law,' counsel say, 'is conservation not commerce.' It is true the means adopted to secure conservation is more insistently brought forward than the right of conservation, and the power of the state over its corporations and over its highways and its right to give or withhold eminent domain is many times put forward in the argument and

illustrated by the citation of many cases. It cannot but be observed that these rights need not the support of one another. If the right of conservation be as complete as contended, for it could be secured by simple prohibitions or penalties. If the power over highways and eminent domain be as absolute as asserted, it will have to be given effect, no matter for what purpose exercised. We are therefore admonished at the very start in the discussion of the importance of the questions presented and the power which the states may exert against one another, even accepting the concession of appellant that Congress may break down the isolation by granting the right not only to take private property, but to subject the highways of the state, against the consent of the state, to the uses of interstate commerce. With full appreciation of the importance of the questions involved, we pass to their consideration."

The court then distinguishes the cases that have to do with the conservation of natural resources and states:

"The statute of Indiana was directed against waste of the gas, and was sustained because it protected the use of all the surface owners against the waste of any. The statute was one of true conservation, securing the rights of property, not impairing them. Its purpose was to secure to the common owners of the gas a proportionate acquisition of it,—a reduction to possession and property,—*not to take away any right of use or disposition after it had thus become property.* It was sustained because such was its purpose; and we said that the surface owners of the soil,

owners of the gas as well, could not be deprived of the right to reduce it to possession without the taking of private property. *It surely cannot need argument to show that if they could not be deprived of the right to reduce the gas to possession, they could not be deprived of any right which attached to it when in possession.*

The Oklahoma statute far transcends the Indiana statute. It does what this court took pains to show that the Indiana statute did not do. It does not protect the rights of all surface owners against the abuses of any. *It does not alone regulate the right of the reduction to possession of the gas, but, when the right is exercised, when the gas becomes property, takes from it the attributes of property,—the right to dispose of it; indeed, selects its market, to reserve it for future purchasers and use within the state, on the ground that the welfare of the state will thereby be subserved.* The results of the contention repel its acceptance. *Gas, when reduced to possession, is a commodity; it belongs to the owner of the land; and, when reduced to possession, is his individual property, subject to sale by him, and may be a subject of intrastate commerce and interstate commerce.* The statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate commerce, and this is the purpose of its conservation. In other words, the purpose of its conservation is in a sense commercial,—the business welfare of the state, as coal might be, or timber. Both of those products may be limited in amount, and the same consideration of the public welfare which would confine gas to the use of the inhabitants of a state would confine

them to the inhabitants of the state. If the states have such power, a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining states their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequences does such power tend? If one state has it, all states have it; embargo may be retaliated by embargo, and commerce will be halted at state lines. And yet we have said that 'in matters of foreign and interstate commerce there are no state lines.' In such commerce, instead of the states, a new power appears and a new welfare,—a welfare which transcends that of any state. But rather let us say it is constituted of the welfare of all of the states, and that of each state is made the greater by a division of its resources, natural and created, with every other state, and those of every other state with it. This was the purpose, as it is the result, of the interstate commerce clause of Constitution of the United States. If there is to be a turning backward, it must be done by the authority of another instrumentality than a court.

The case of *State ex rel. Corwin v. Indiana & O. Oil, Gas & Min. Co.*, 120 Ind. 575, 6 L. R. A. 579, 2 Inters. Com. Rep. 758, 22 N. E. 778, is pertinent here. A statute of Indiana was considered which made it unlawful to pipe or conduct gas from any point within the state to any point or place without the state. It was assailed on one side as a regulation of interstate commerce, and therefore void under the Constitution of the United States. It was defended, on the

other hand, as a provision for the exercise of the right of eminent domain, confining it to those engaged in state business, denying it to those engaged in interstate business; and, further, as imposing restrictions on foreign corporations. It will be observed, therefore, the statute had, it may be assumed, the same inducement as the Oklahoma statute, and the same special justifications were urged in its defense. The court rejected the defenses, and decided that the statute was not a legitimate exercise of the police power, or the regulation of the right of eminent domain or of foreign corporations, but had the purpose 'plainly and unmistakably manifested' to prohibit transportation of natural gas beyond the limits of the state; and that, this being its purpose, it was void as a regulation of interstate commerce. These propositions were announced: (1) Natural gas is as much a commodity as iron ore, coal, or petroleum or other products of the earth, and can be transported, bought, and sold as other products. (2) It is not a commercial product when it is in the earth, but becomes so when brought to the surface and placed in pipes for transportation. (3) If it can be kept within the state after it has become a commercial product, so may corn, wheat, lead, and iron. If laws can be enacted to prevent its transportation, 'a complete annihilation of interstate commerce might result.' And the court concluded: 'We can find no tenable ground upon which the act can be sustained, and we are compelled to adjudge it invalid.' The case was explicitly affirmed in *Manufacturers' Gas & Oil Co. v. Indiana Natural Gas & Oil Co.*, 155 Ind. 545, 53 L. R. A. 134, 58 N. E. 706, 21 Mor. Min. Rep. 102."

On page 728, the court states:

"There is here and there a suggestion that the state not having granted such right, the alternative is a grant of it by Congress. But this overlooks the affirmative force of the interstate commerce clause of the Constitution. The inaction of Congress is a declaration of freedom from state interference with the transportation of articles of legitimate interstate commerce, and this has been the answer of the courts to contentions like those made in the case at bar. State ex rel. Corwin v. Indiana & O. Oil, Gas & Min. Co., 120 Ind. 575, 6 L. R. A. 579, 2 Inters. Com. Rep. 758, 22 N. E. 778; Benedict v. Columbus Constr. Co., 49 N. J. Eq. 23, 23 Atl. 485, and also in Haskell v. Cowham (April 7, 1911), United States circuit court of appeals, eighth circuit. In the latter case the Oklahoma statute was under review, and in response to the same contentions which are here presented, these propositions were announced, with citation of cases:

'No state by the exercise of, or by the refusal to exercise, any or all of its powers, may prevent or unreasonably burden interstate commerce within its borders in any *sound article thereof*.

'No state by the exercise of, or by the refusal to exercise, any or all of its powers, may substantially discriminate against or directly regulate interstate commerce or the right to carry it on.' * * *

We place our decision on the character and purpose of the Oklahoma statute. The state, as we have seen, grants the use of the highways to domestic corporations engaged in intrastate trans-

portation of natural gas, giving such corporations even the right to the longitudinal use of the highways. It denies to appellees the lesser right to pass under them or over them, notwithstanding it is conceded in the pleadings that the greater use given to domestic corporations is no obstruction to them. This discrimination is beyond the power of the state to make. As said by the circuit court of appeals in the eighth circuit, no state can by action or inaction prevent, unreasonably burden, discriminate against, or directly regulate, interstate commerce or the right to carry it on. And in all of these inhibited particulars the statute of Oklahoma offends."

(Emphasis and italics throughout are those of the writer of the brief.)

In *Simpson v. Shepard*, 230 U. S. 352, 33 Supreme Court 729, 57 Lawyer's Edition 1511, the court said:

"If a state enactment imposes a direct burden upon interstate commerce, it must fall regardless of federal legislation. The point of such an objection is not that Congress has acted, but that the state has directly restrained that which, in the absence of federal regulation should be free. (57 Law Ed., p. 1540.)

The grant in the Constitution of its own force, that is, without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. It has repeatedly been declared by this court that

as to those subjects which require a general system of uniformity of regulation, the power of Congress is exclusive. In other matters admitting of diversity of treatment, according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation. (Citing cases.)

The principle which determines this classification underlies the doctrine that the states cannot, under any guise, impose direct burdens upon interstate commerce. For this is but to hold that the states are not permitted directly to regulate or restrain that which, from its nature, should be under the control of the one authority, and be free from restriction, save as it is governed in the manner that the national legislative constitutionality ordains. (57 Law Ed., p. 1541.)"

The opinion then cites decisions holding that

"the states cannot tax interstate commerce, either by *laying the tax upon the business* which constitutes such commerce or the privilege of engaging in it, *or upon the receipts*, as such, derived from it; or upon persons or property in transit in interstate commerce; that they have no power to prohibit interstate trade in legitimate articles of commerce (citing cases), or to discriminate against the products of other states (citing cases); or to exclude from the limits of the state corporations or others engaged in interstate commerce, or to fetter by conditions their right to carry it on (citing cases); or to prescribe the rates to be charged for transportation from one state to another, or to subject the operations

of carriers in the course of such transportation to requirements that are unreasonable or pass beyond the bounds of equitable local protection." (Citing cases.)

"But within these limitations there necessarily remains to the states until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending federal intervention. Thus, there are *certain subjects having the most obvious and direct relation to interstate commerce, which nevertheless, with the acquiescence of Congress, have been controlled by state legislation from the foundation of the government because of the necessity that they should not remain unregulated, and that their regulation should be adapted to varying local exigencies; hence, the absence of regulation by Congress in such matters has not imported that there should be no restriction, but rather that the states should continue to supply the needed rules until Congress should decide to supersede them. Further, it is competent for a state to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals and welfare of its people, although interstate commerce may be incidentally or indirectly involved. Our system of government is a practical adjustment by which the national authority as conferred by the Constitution is maintained in its full scope without*

unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the federal power. In such case, Congress must be the judge of the necessity of federal action. *Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own.* The successful working of our constitutional system has thus been made possible. (57 Law. Ed., p. 1543.)"

In the case of *Lemke v. Farmers Grain Company*, 258 U. S. 50, 66 Lawyers' Edition 458, the court was dealing with an act of the legislature of the state of North Dakota and stated:

"The record discloses that North Dakota is a great grain-growing state, producing annually large crops, particularly wheat, for transportation beyond its borders. Complainant, and other buyers of like character, are owners of elevators and purchasers of grain bought in North Dakota, to be shipped to and sold at terminal markets in other states, the principal markets being at Minneapolis and Duluth. There is practically no market in North Dakota, for the grain purchased by complainant.

The purchases are generally made with the intention of shipping the grain to Minneapolis. The grain is placed in the elevator for shipment, and loaded at once upon cars for shipment to Minneapolis and elsewhere outside the state of North Dakota. * * *

The market for grain bought at Embden is outside the State of North Dakota, and it is an unusual thing to get an offer from a point within the state. After the grain is loaded upon the cars it is generally consigned to a commission merchant at Minneapolis. At the terminal market the grain is inspected and graded by inspectors licensed under Federal law.

That such course of dealing constitutes interstate commerce, there can be no question. * * *

Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line between state and Federal authority under facts presented, which required a definition of interstate commerce where the right of state taxation was involved, or manufacture or commerce of an intrastate character was the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of Federal control. Cases of that type are not in conflict with principles recognized as controlling here. *None of them indicates, much less decides, that interstate commerce does not include the buying and selling of products for shipment beyond state lines.* It is true, as appellants contend, that after

the wheat was delivered at complainant's elevator, or loaded on the cars for shipment, it might have been diverted to a local market or sent to a local mill. But such was not the course of business. *The testimony shows that practically all the wheat purchased by the complainant was for shipment to and sale in the Minneapolis market. That was the course of business, and fixed and determined the interstate character of the transaction.* Swift & Co. v. United States, 196 U. S. 375, 49 L. Ed. 518, 25 Sup. Ct. Rep. 276; Eureka Pipe Line Co. v. Hallanan, decided by this court December 12, 1921 (257 U. S. 265, ante, 227, 42 Sup. Ct. Rep. 101); and United Fuel Gas Co. v. Hallanan, decided the same day (257 U. S. 277, ante, 234, 42 Sup. Ct. Rep. 105)
 * * * (p. 462).

This act shows a comprehensive scheme to regulate the buying of grain. Such purchases can only be made by those who hold licenses from the state, pay state charges for the same, and act under a system of grading, inspecting, and weighing fully defined in the act. Furthermore, the grain can only be purchased subject to the power of the state grain inspector to determine the margin of profit which the buyer shall realize upon his purchase. * * *

That this is a regulation of interstate commerce is obvious from its mere statement.

Nor will it do to say that the state law acts before the interstate transaction begins. It seizes upon the grain and controls its purchase at the beginning of interstate commerce. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 238 U. S.

456, 468, 59 L. Ed. 1406, 1411, 35 Sup. Ct. Rep. 896.

It is contended that these regulations may stand upon the principles recognized in decisions of this court which permit the state to make local laws under its police power, in the interest of the welfare of its people, which are valid, although affecting interstate commerce, and may stand, at least until Congress takes possession of the field under its superior authority to regulate commerce among the states.

This principle has no application where the state passes beyond the exercise of its legitimate authority, and undertakes to regulate interstate commerce by imposing burdens upon it. This court stated the principle and its limitations in the discussion of the subject in the *Minnesota Rate Cases* (*Simpson v. Shepard*), 230 U. S. 352, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, 33 Sup. Ct. Rep. 729, Ann. Cas. 1916A, 18. * * *

Applying the principle here, the statute denies the privilege of engaging in interstate commerce except to dealers licensed by state authority, and provides a system which enables state officials to fix the profit which may be made in dealing with a subject of interstate commerce. (pp. 463-4.)

It is alleged that such legislation is in the interest of the grain growers, and essential to protect them from fraudulent purchases, and to secure payment to them of fair prices for the grain actually sold. This may be true, but Congress is amply authorized to pass measures to protect interstate commerce, if legislation of that character is needed. The supposed inconvenience and wrongs are not to be redressed by sustaining the

constitutionality of laws which clearly encroach upon the field of interstate commerce, placed by the Constitution under Federal control. . . .
(p. 465.)”

The court, of course, will bear in mind that the raisin prorate program does not relate to the cultivation, growing or harvesting of grapes. It is first applied to the raisin, which is the severed, dried and cured grape. It then attempts to seize upon and take title to the raisin and to deprive the owner of the power to sell or dispose of the same in interstate commerce or for interstate commerce.

In *Shafer v. Farmers' Grain Company of Embden*, 268 U. S. 189, 45 Supreme Court Reporter, 481, the court said:

“A prior statute, concededly ‘having the same general purpose,’ was adopted by the State Legislature in 1919 (Laws 1919, c. 138) and held invalid by this court in *Lemke v. Farmers' Grain Co.*, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458, as an interference with interstate commerce. There are differences between that statute and the present one, of which the parties take divergent views. It would serve no purpose to take up these differences in detail. We shall describe the situation to which the present act is intended to apply, state its material provisions, and then come to its operation on interstate commerce.

Wheat is the chief product of the farms of North Dakota, the annual crop approximating 150,000,000 bushels. About 10 per cent is used and consumed locally, and about 90 per cent is sold within the state to buyers who purchase for

shipment, and ship, to terminal markets outside the state. Most of the sales are made at country elevators to which the farmers haul the grain when harvested and threshed. These elevators are maintained and operated by the buyers as facilities for receiving the grain from the farmers' wagons and loading it into railroad cars. The loading usually proceeds as rapidly as grain of any grade is accumulated in carload lots and cars can be obtained. When a car is loaded it is sent promptly to a terminal market and the grain is there sold. This is the usual and recognized course of buying and shipment. Occasionally a farmer has his grain stored in the country elevator, or shipped to a terminal elevator for storage, and awaits a possible increase in price; but even in such instances he usually sells to the buyer operating the country elevator, and the latter then sends the grain to the terminal market, if it has not already gone there. * * *

The North Dakota act in terms covers all farm products, but as it is chiefly aimed at dealings in wheat, and the parties have discussed it on that basis, our statement of its provisions will be shortened by treating them as if relating only to wheat.

The title to the act describes it as one whereby the state undertakes (a) 'to supervise and regulate the marketing' of wheat; (b) to prevent 'unjust discrimination, fraud and extortion in the marketing' of such grain; and (c) to establish 'a system of grading, weighing, and measuring' it. The first section declares the purpose of the state to encourage, promote, and safeguard the production of wheat and commerce therein by

establishing a uniform system of grades, weights, and measures. The second and third sections provide for a state supervisor of grades, weights, and measures, and give him authority to make and enforce necessary orders, rules, and regulations to carry out the provisions of the act. * * *

The eighth section requires every buyer operating an elevator to obtain from the supervisor a yearly license, the fee for which is to be adjusted by the supervisor to the capacity of the elevator as not exceeding \$1 for each 1,000 bushels. The ninth section requires every elevator operator or individual 'buying or shipping for profit,' who does not pay cash in advance, to file with the supervisor a sufficient bond, running to the state, to secure payment for all wheat bought on credit. * * *

Buying for shipment, and shipping to markets in other states, when conducted as before shown, constitutes interstate commerce; the buying being as much a part of it as the shipping. We so held in *Lemke v. Farmers' Grain Co.*, supra, following and applying the principle of prior cases. Later cases have given effect to the same principle. *Stafford v. Wallace*, 258 U. S. 495, 516, 42 S. Ct. 397, 66 L. Ed. 735, 23 A. L. R. 229; *Binderup v. Pathe Exchange*, 263 U. S. 291, 309, 44 S. Ct. 96, 68 L. Ed. 308.

Wheat—both with and without dockage—is a legitimate article of commerce and the subject of dealings that are nationwide. The right to buy it for shipment, and to ship it, in interstate commerce, is not a privilege derived from state laws, and which they may fetter with conditions, but is a common right, the regulation of which

is committed to Congress and denied to the states by the commerce clause of the Constitution. * * *

In our opinion the North Dakota act falls certainly within the second of the two rules just stated. By it that state attempts to exercise a large measure of control over *all wheat buying* within her limits. About 90 per cent of the buying is in interstate commerce. Through this buying and the shipping in connection with which it is conducted the wheat which North Dakota produces in excess of local needs—more than 125,000,000 bushels a year—finds a market and is made available for consumption in other states where the local needs greatly exceed the production. Obviously therefore the control of this buying is of concern to the people of other states as well as those of North Dakota. * * *

We think it plain that, in subjecting the buying for interstate shipment to the conditions and measure of control just shown, the act directly interferes with and burdens interstate commerce, and is an attempt by the state to prescribe rules under which an important part of such commerce shall be conducted. This no state can do consistently with the commerce clause.

The defendants make the contention that we should assume the existence of evils justifying the people of the state in adopting the act. The answer is that there can be no justification for the exercise of a power that is not possessed. If the evils suggested are real, the power of correction does not rest with North Dakota but with Congress, where the Constitution intends that it shall be exercised with impartial regard for the interests of the people of all the states that are affected. * * *

For the reasons here given we hold that the act is a direct regulation of the buying of grain in interstate commerce, and therefore invalid, and that the District Court rightly granted the injunction."

In *Grandin Farmers' Co-op. Elevator Co. v. Langer*, 5 Fed. Supp. 425 (affirmed without opinion in 292 U. S. 605, 78 Lawyers' Edition, 1467), the court said:

"The complainants are the owners and operators of grain elevators located in the state of North Dakota, and their business consists of the buying, selling, storing, and shipping of the grain at such elevators with the intent and purpose of causing such grain to be transported to terminal markets situated outside of the state. That they are engaged in interstate commerce is virtually conceded, as it, of course, must be in view of the decisions of the Supreme Court of the United States in *Lemke v. Farmers' Grain Co.*, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458, and *Shafer v. Farmers' Grain Co.*, 268 U. S. 189, 45 S. Ct. 481, 69 L. Ed. 909. In the latter case that court said (page 198 of 268 U. S., 45 S. Ct. 481, 485, 69 L. Ed. 909):

'Buying for shipment, and shipping, to markets in other states, when conducted as before shown, constitutes interstate commerce; the buying being as much a part of it as the shipping.'

The defendants are the Governor of the state and the board of railroad commissioners. Chapter 1 of the Laws of North Dakota for 1933 authorizes the Governor to 'declare and maintain an embargo on the shipment out of this state of any agricultural product produced within the state,

when the market price thereof reaches a point where the returns are confiscatory'; the Legislature declaring that 'agricultural products taken from the soil constitute a drain on the natural resources of this state, and that the disposition thereof at confiscatory prices becomes a matter of public concern warranting an executive order to prevent the same'. Pursuant to the authority assumed to have been conferred upon him under this act, the Governor has declared and is seeking to maintain an embargo upon the shipment of grain out of North Dakota."

The court discusses jurisdiction and continues:

"Since the act of the Legislature and the proclamations of the Governor under it, against the enforcement of which the injunction is sought, appear to be in direct conflict with the commerce clause of the Constitution, it is unnecessary for us to consider whether they are in violation of other constitutional provisions.

The state has no power to interfere directly with interstate commerce, regardless of economic conditions. The regulation of such commerce is a matter of national concern. While in certain respects this country is an aggregation of independent states, it is, as respects interstate and foreign commerce, a nation. This must necessarily be true, since people living in many of our great centers of population are utterly dependent not only for their livelihood but for their lives upon an uninterrupted flow of food, fuel, and clothing in interstate commerce. If one state or all the states could place embargoes upon the export of the products of their mines, forests, fields, and oil wells, an inconceivable condition of national insecurity

would follow. This is pointed out in *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229, page 255, 31 S. Ct. 564, 571, 55 L. Ed. 716, 35 L. R. A. (N. S.) 1193, in which the court, speaking of the power of the states to lay embargoes, said:

'If the states have such power, a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining states their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequences does such power tend? If one state has it, all states have it; embargo may be retaliated by embargo, and commerce will be halted at state lines. And yet we have said that "in matters of foreign and interstate commerce there are no state lines". In such commerce, instead of the states, a new power appears and a new welfare,—a welfare which transcends that of any state. But rather let us say it is constituted of the welfare of all of the states, and that of each state is made the greater by a division of its resources, natural and created, with every other state, and those of every other state with it. This was the purpose, as it is the result, of the interstate commerce clause of the Constitution of the United States. If there is to be a turning backward, it must be done by the authority of another instrumentality than a court.'

In *Shafer v. Farmers' Grain Co.*, supra, the court said (page 198 of 268 U. S., 45 S. Ct. 481, 485, 69 L. Ed. 909):

‘Wheat—both with and without dockage—is a legitimate article of commerce and the subject of dealings that are nationwide. The right to buy it for shipment, and to ship it, in interstate commerce, is not a privilege derived from state laws, and which they may fetter with conditions, but is a common right, the regulation of which is committed to Congress and denied to the states by the commerce clause of the Constitution.’

A state statute which, by its necessary operation, directly interferes with or burdens interstate commerce is a prohibitive regulation and invalid, regardless of the purpose for which it was enacted. Etc.

The same contention which is made here as to the right of the state to make local laws under its police power which are valid although affecting interstate commerce was made in the case of *Lemke v. Farmers' Grain Co.*, supra, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458. The court said (page 58 of 258 U. S., 42 S. Ct. 244, 247, 66 L. Ed. 458):

‘It is contended that these regulations may stand upon the principles recognized in decisions of this court which permit the State to make local laws under its police power in the interest of the welfare of its people, which are valid although affecting interstate commerce, and may stand, at least until Congress takes possession of the field under its superior authority to regulate commerce among the States. This principle has no application where the State passes beyond the exercise of its legitimate authority, and undertakes to regulate interstate commerce by imposing burdens upon it.

This court stated the principle and its limitations in the discussion of the subject in the Minnesota Rate Cases, 230 U. S. 352, 33 S. Ct. 729, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18. In the course of the opinion in that case, we said (230 U. S. p. 400, 33 S. Ct. 729, 740, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18):

“The principle, which determines this classification (between federal and state power), underlies the doctrine that the States cannot under any guise impose direct burdens upon interstate commerce. For this is but to hold that the States are not permitted directly to regulate or restrain that which from its nature should be under the control of the one authority and be free from restriction save as it is governed in the manner that the national legislature constitutionally ordains.”

We find no help for the defendants in *People v. Nebbia*, 262 N. Y. 259, 186 N. E. 694, the so-called New York Milk Case. That case related to the right of the Legislature of the state of New York to regulate the wholesale and retail prices for milk handled within the state for consumption. The legislation was attacked on the ground that it interfered with contract and property rights; the commerce clause of the Federal Constitution was in no way involved.”

Concluding, the court said:

“The New York Milk Case and the Minnesota Moratorium Case both represent asserted conflicts between the rights of the state, under its police

power, to legislate for the general welfare of its people, and the rights of individuals in their contracts or property under the Constitution. This case, as we view it, is not primarily a conflict between the police power of the state and the rights of individuals, but a conflict between the power of the state and the power of the United States with respect to a subject with which, under the Constitution, Congress alone has a right to deal.

Our conclusion is that the act of the Legislature and the proclamations of the Governor under it are void."

In *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1, 49 S. Ct. 1, the State of Louisiana had passed an act permitting the gathering of shrimp and permitting its sale in interstate commerce. It, however, passed an act forbidding the shipment in interstate commerce all such shrimp unless the heads and hulls were removed. The plaintiff brought an action to enjoin the enforcement of the statute on the ground that it was unconstitutional, alleging that the saving of the head and hull was a pretext and that it was of no value to the people of the State of Louisiana, and that the real purpose of the limitation was to force the packing plants of other states to move into Louisiana to pack the shrimp. The District Court denied a preliminary injunction. On appeal to the Supreme Court of the United States a preliminary injunction was issued, and in passing on the act the court said:

"In determining what is interstate commerce, courts look to practical considerations and the established course of business. *Swift & Co. v.*

United States, 196 U. S. 375, 398, 49 L. ed. 518, 525, 25 Sup. Ct. Rep. 276; *Lemke v. Farmers Grain Co.*, 258 U. S. 50, 59, 66 L. ed. 458, 464, 42 Sup. Ct. Rep. 244; *Binderup v. Pathe Exch.*, 263 U. S. 291, 309, 68 L. ed. 308, 316, 44 Sup. Ct. Rep. 96; *Shafer v. Farmers Grain Co.*, 268 U. S. 189, 198, 200, 69 L. ed. 909, 914, 915, 45 Sup. Ct. Rep. 481. Interstate commerce includes more than transportation; it embraces all the component parts of commercial intercourse among states. And a state statute that operates directly to burden any of its essential elements is invalid. *Dahnke-Walker Mill Co. v. Bondurant*, 257 U. S. 282, 290, 66 L. ed. 239, 243, 42 Sup. Ct. Rep. 106; *Shafer v. Farmers Grain Co.*, *supra*, 199 (69 L. ed. 914, 45 Sup. Ct. Rep. 481). A state is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the state. *Pennsylvania v. West Virginia*, 262 U. S. 553, 596, 67 L. ed. 1117, 1132, 32 A. L. R. 300, 43 Sup. Ct. Rep. 658; *West v. Kansas Natural Gas Co.*, 221 U. S. 229, 255, 55 L. ed. 716, 726, 35 L. R. A. (N. S.) 1193, 31 Sup. Ct. Rep. 564. * * * Consistently with the act, all may be, and in fact nearly all is, caught for transportation and sale in interstate commerce. As to such shrimp, the protection of the commerce clause attaches at the time of the taking. *Dahnke-Walker Mill Co. v. Bondurant*, *supra*. *Pennsylvania v. West Virginia*, *supra*, 596 et seq. (67 L. ed. 1132; 32 A. L. R. 300, 43 Sup. Ct. Rep. 658)."

3. DECISIONS UNDER FEDERAL STATUTES.

Congress has enacted a statute, known as AAA, which is almost identical in phraseology and in purpose with the Agricultural Prorate Act of California. Quotations from decisions under this act will be made, as they indicate the field which Congress considers properly within the terms of the commerce clause of the United States Constitution.

In *United States v. Edwards*, 16 Federal Supplement, 53, the United States District Court for the Southern District of California, sustained the legality of the AAA with respect to an orange and grapefruit district established in Southern California. The AAA was held properly enacted under the commerce clause. This case was appealed by the defendant and was finally disposed of in *United States v. Edwards*, 91 Federal (2d) 767, wherein the Ninth Circuit Court of Appeals stated that ninety percent of the oranges produced in California moved in interstate and foreign commerce. The court said that it would take judicial notice that the citrus orchard industry has its beginning as an article of interstate commerce even to the planting of the trees. On page 780, it states:

"Under the decision in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 57 S. Ct. 615, 81 L. Ed., 108 A. L. R. 1352, overruling *Carter v. Carter Coal Co.*, 298 U. S. 238, 56 S. Ct. 855, 80 L. Ed. 1160, Congress may directly regulate production of commodities to be shipped in interstate commerce. Hence it could directly regulate the planting and manage-

ment of citrus orchards and marketing of fruit within a state under the profit motive of the sale of the major portion of the fruit to consumers in other states.

Since the greater includes the less, the Agricultural Adjustment Act may, as an incident to regulating the flow of oranges to be shipped out of California and Arizona, affect the price both of the lesser amount shipped out and the greater amount remaining in those states.

In a like way the act may affect the planting, maintenance or abandonment of citrus groves."

The court makes an extensive review and quotation from *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 57 Supreme Court 615, and concludes that the Federal Congress had plenary power to enact the AAA under the commerce clause. The decision is quite long and comprehensive and the court will probably desire to read the whole of the case.

In *Currin v. Wallace*, 306 U. S. 1, 59 Supreme Court 379, January 30, 1939, the court had for consideration the power of Congress to enact the Tobacco Inspection Act. The constitutionality was challenged on the ground that it was not within the scope of the commerce clause of the Federal Constitution. The plaintiffs were warehousemen, operating in North Carolina, and sought to enjoin the enforcement of the Act. The Act was put into effect in North Carolina, in a manner similar to the Prorate Act of California. Auction sales were had of tobacco. The buyers were mostly persons

transporting the tobacco in interstate commerce. At least sixty-five percent of all purchases on the warehouse floor were ultimately transported in interstate commerce. The court said:

"The fact that the growers are not bound to accept bids, and in certain instances reject them, does not remove the auction from its immediate relation to the sales that are consummated upon the offers that the growers do accept. The auction in such cases is manifestly a part of the transaction of sale. So far as the sales are for shipment to other States or to foreign countries, it is idle to contend that they are not sales in interstate or foreign commerce and subject to congressional regulation. *Where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation.* Swift & Co. v. United States, 196 U. S. 375, 398, 399, 25 S. Ct. 276, 280, 49 L. Ed. 518 (other citations omitted).

There is no permissible constitutional theory which would apply this principle to purchases of livestock as in the Swift and Stafford Cases, and of grain as in the Lemke and Shafer Cases, and deny its application to tobacco. In the Lemke Case (supra, at pages 60, 61, 42 S. Ct. at page 248), condemning the effort of a State to control the buying of grain for shipment to other States, the Court referred to the power of Congress to provide its own regulation for such transactions, saying: 'It is alleged that such legislation is in the interest of the grain growers and essential to protect them from fraudulent purchases, and to secure payment to them of fair prices for the grain actually sold. This may be true, but Congress is

amply authorized to pass measures to protect interstate commerce if legislation of that character is needed.' And again, in the Shafer Case (supra, at pages 188, 199, 45 S. Ct. at page 485), the Court said: 'The right to buy it (grain) for shipment, and to ship it, in interstate commerce, is not a privilege derived from state laws, and which they may fetter with conditions, but is a common right, the regulation of which is committed to Congress and denied to the states by the commerce clause of the Constitution.' * * *

Having this authority to regulate the sales on the tobacco market, Congress could prescribe the conditions under which the sales *should be made in order to give protection to sellers or purchasers or both*. Congress is not to be denied the exercise of its constitutional authority in prescribing regulations merely because these may have the quality of police regulations. It is on that principle that misbranding under the Food and Drugs Act embraces false or misleading statements as to the ingredients of commodities or the effects of their use. See *Seven Cases v. United States*, 239 U. S. 510, 36 S. Ct. 190, 60 L. Ed. 411, L. R. A. 1916D, 164. Inspection and the establishment of standards for commodities has been regarded from colonial days as appropriate to the regulation of trade, and the authority of the States to enact inspection laws is recognized by the Constitution. Art. 1, sec. 10, cl. 2, U. S. C. A. See *Turner v. Maryland*, 107 U. S. 38, 39, 51-54, 2 S. Ct. 44, 55, 27 L. Ed. 370; *Pacific States Company v. White*, 296 U. S. 176, 181, 56 S. Ct. 159, 161, 80 L. Ed. 138, 101 A. L. R. 853. *But the inspection laws of a State relating to exports or to articles purchased for shipment to other States are subject to the*

paramount regulatory power of Congress. Turner v. Maryland, *supra*, at pages 57, 58, 2 S. Ct. at page 60. And Congress has long exercised this authority in enacting laws for inspection and the establishment of standards in relation to various commodities involved in transactions in interstate or foreign commerce. The fact that the inspection and grading of the tobacco take place before the auction does not dissociate the former from the latter, but on the contrary it is obvious that the inspection and grading have immediate relation to the sales in interstate and foreign commerce which Congress thus undertakes to govern.

In *Townsend v. Yeomans*, 301 U. S. 441, 57 S. Ct. 842, 81 L. Ed. 1210, we recently had under consideration the legislation of Georgia prescribing maximum charges for the services of tobacco warehousemen who conducted their business in a manner similar to that prevailing in North Carolina. There, the warehousemen strongly insisted that they were engaged in interstate and foreign commerce, as the tobacco sold on their floors was destined for interstate or foreign shipment, and hence that the State was without power to fix their fees. They invoked the federal Act in support of their contention. But we found nothing in the federal Act which undertook to regulate the charges of warehousemen and hence we concluded that Congress had restricted its requirements and left the State free to deal with the matters not covered by the federal legislation and not inconsistent therewith. The authority of Congress to enact the Tobacco Inspection Act was not questioned."

In *Mulford v. Smith*, 307 U. S. 38, 59 Supreme Court, 648, decided April 17, 1939, the court had for consideration an attack upon the constitutionality of the AAA. This Act provided marketing quotas for tobacco, under a program set up involving tobacco. The apportionment of the quotas amongst the farmers was to be by local committees of farmers according to the standards prescribed in the Act. Each farmer was to be notified of his marketing quota; heavy penalties were imposed for excess marketing. Answering the attack of the appellants, the court said:

"The appellants plant themselves upon three propositions: (1) that the Act is a statutory plan to control agricultural production and, therefore, beyond the powers delegated to Congress; (2) that the standard for calculating farm quotas is uncertain, vague, and indefinite, resulting in an unconstitutional delegation of legislative power to the Secretary; (3) that, as applied to appellants' 1938 crop, the Act takes their property without due process of law.

First. The statute does not purport to control production. It sets no limit upon the acreage which may be planted or produced and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. It purports to be solely a regulation of interstate commerce, which it reaches and affects at the throat where tobacco enters the stream of commerce,—the marketing warehouse. The record discloses that at least two-thirds of all flue-cured tobacco sold at auction warehouses is sold for immediate shipment to an interstate or foreign destination. In Georgia nearly one hundred per cent. of the

tobacco so sold is purchased by extrastate purchasers. In markets where tobacco is sold to both interstate and intrastate purchasers it is not known, when the grower places his tobacco on the warehouse floor for sale, whether it is destined for interstate or intrastate commerce. Regulation to be effective, must, and therefore may constitutionally, apply to all sales. This court has recently declared that sales of tobacco by growers through warehousemen to purchasers for removal outside the state constitute interstate commerce. Any rule, such as that embodied in the Act, which is intended to foster, protect and conserve that commerce, or to prevent the flow of commerce from working harm to the people of the nation, is within the competence of Congress. Within these limits the exercise of the power, the grant being unlimited in its terms, may lawfully extend to the absolute prohibition of such commerce, and *a fortiori* to limitation of the amount of a given commodity which may be transported in such commerce. The motive of Congress in exerting the power is irrelevant to the validity of the legislation.

The provisions of the Act under review constitute a regulation of interstate and foreign commerce within the competency of Congress under the power delegated to it by the Constitution."

It is apparent that if the regulation of the flow of tobacco in interstate commerce is within the commerce clause of the Federal Constitution, the regulation of the flow of raisins into interstate commerce is also a matter within the control of Congress and not within the control of the State. In *Whittenburg v.*

United States, 100 Federal (2d), 520, December 15, 1938, the United States District and Circuit Court of Appeals had for consideration the validity of a program involving grapefruit put into effect in Texas under the AAA. The court held it was proper legislation under the interstate commerce clause. If it was a proper field in which Congress could legitimately legislate, it would seem to be obvious that the state could not legislate upon such matter, for the court there said:

"If the economic end is to be reached by an interstate regulation of commerce, the Congress may, and must, devise the regulation."

In *United States v. Rock Royal Co-op.*, 59 Sup. Ct. 993-1010, 307 U. S. 533, decided June 5, 1939, the court referred to and followed the *Lemke* case and stated:

"The challenge is to the regulation 'of the price to be paid upon the sale by a dairy farmer who delivers his milk to some country plant.' It is urged that the sale, a local transaction, is fully completed before any interstate commerce begins and that the attempt to fix the price or other elements of that incident violates the Tenth Amendment, U. S. Const. But where commodities are bought for use beyond state lines, the sale is a part of interstate commerce."

The above case had to do with a pro rate program under the Triple A, relating to the dairying interests in one of the mid-western states.

In *Wallace v. Hudson-Duncan & Company*, Ninth Circuit Court of Appeals, 98 Federal (2d) 985, de-

cided September 20, 1938, the court had for consideration the validity of a walnut program established by the Secretary of Agriculture, covering the states of California, Oregon and Washington. The District Court held the program unconstitutional, but the Circuit Court of Appeals reversed the case, saying:

"Congress, in the exercise of its police power in the field of interstate commerce, may regulate intrastate commerce in walnuts, where, as here, such regulation bears a reasonable relation to the prevention of an economic evil in the interstate walnut trade.

In *Edwards v. U. S.*, supra, we have gathered the cases establishing that the congressional police power regulating interstate commerce to attain the price parity sought by the Act is not prevented by the Constitution from the incidental regulation of intrastate activities. * * * In *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, the regulation of the labor dispute was in intrastate production before the products to be shipped even had been manufactured. It was the intention to ship them when thereafter fully manufactured which warranted the regulation of their intrastate production. The finding by the Court of the percentages of shipment of goods in interstate commerce, prior to the labor disputes, is relevant only to prove the intent so to ship the goods whose manufacture the dispute interfered with or prevented. * * * Certainly the regulation of intrastate rates and labor relations in intrastate production in these last two cases is no less than is the control provided for in the instant case. * * * The company contends that because some of the walnuts delivered to the

Board may remain within the state, say, by delivery to one of the state's charitable institutions, the regulation is of intrastate commerce for which there is no finding of fact for its necessity. This and all the other effects on intrastate commerce are merely incidental to the prevention of the interstate shipment of the surplus, adequately found by the Secretary to have its destructive effect on the desired price parity. Hence it could directly regulate the planting and management of citrus orchards and marketing of fruit within a state under the profit motive of the sale of the major portion of the fruit to consumers in other states."

Raisins are, undoubtedly, produced, cured and marketed as interstate commerce. The mere fact that a small percentage of such fruit may be consumed locally is immaterial. The state does not possess the power to withhold raisins from interstate commerce. The power to deny *sound* property access to interstate commerce is vested in Congress and not in the states. The court will bear in mind that the Agricultural Prorate Act and the program set up under the same does not attempt to improve the quality of raisins and grapes or grapevines. It is not an act under the police power to do away with disease or infected plants or fruits. It is a plant devised and being carried through for the sole object of regulating the flow and the price of raisins in interstate commerce.

4. BROADENING PHILOSOPHY OF THE POWER OF CONGRESS UNDER THE COMMERCE CLAUSE AS INDICATED BY LABOR DECISIONS.

In *National Labor Relations Board v. Carlisle Lumber Company*, 94 Federal (2d) 138, decided in 1937, the company owned forests and lumber mills. It did all of its logging and milling operations within the State of California, but ninety percent of its lumber found its consumption in interstate commerce. The question arose whether under the Wagner Labor Act, the Federal Government could enforce its provisions with respect to the men working not only in the mill but in the logging camps, and the court upheld the right, saying that the acts of the laborers in the logging camps would "affect commerce", and, for that reason, Congress had power to regulate such activities. In *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 57 Supreme Court, 615, April 12, 1937, the court was considering the power of the National Labor Relations Board to adjudge the defendant guilty of unfair labor practices. The defendant had its steel mills in Pittsburgh and Aliquippa, Pennsylvania. To these mills were brought coal, iron and supplies from other states. These supplies stayed at the mills varying lengths of time, from three to ten months, when they were converted into finished or semi-finished steel products. The Act gave Congress control over any acts "affecting commerce" and defined commerce as: "The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several states * * *" and defined the term, "affecting commerce" as: "The term

'affecting commerce' means in commerce, or burdening or obstructing commerce, or the free flow of commerce, or having led, or tending to lead, to a labor dispute, burdening or obstructing commerce, or the free flow of commerce." In that case the raw products when subjected to manufacturing processes "are changed substantially as to character, utility and value." The court said (page 624):

"We do not find it necessary to determine whether these features of defendant's business dispose of the asserted analogy to the 'stream of commerce' cases. The instances in which that metaphor has been used are but particular, and not exclusive, illustrations of the protective power which the government invokes in support of the present act. The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection or advancement'."

Again on page 625, the court says:

"The close and intimate effect which brings the subject within the reach of federal power may be due to activities in relation to productive industry although the industry when separately viewed is local. This has been abundantly illustrated in the application of the Federal Anti-Trust Act (15 U. S. C. A. paragraphs 1-7, 15

note). In the Standard Oil and American Tobacco Cases (Standard Oil Co. v. United States), 221 U. S. 1, 31 S. Ct. 502, 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, Ann. Cas. 1912D, 734; (United States v. American Tobacco Co.) 221 U. S. 106, 31 S. Ct. 632, 55 L. Ed. 663), that statute was applied to combinations of employers engaged in productive industry. Counsel for the offending corporations strongly urged that the Sherman Act had no application because the acts complained of were not acts of interstate or foreign commerce, nor direct and immediate in their effect on interstate or foreign commerce, but primarily affected manufacturing and not commerce. 221 U. S. 1, at page 5, 31 S. Ct. 502, 55 L. Ed. 619, 34 L. R. A. (N. S.) 834; Ann. Cas. 1912D, 734; 221 U. S. 106, at page 125, 31 S. Ct. 632, 55 L. Ed. 663. Counsel relied upon the decision in United States v. E. C. Knight Co., 156 U. S. 1, 15 S. Ct. 249, 39 L. Ed. 325. The Court stated their contention as follows: 'That the act, even if the averments of the bill be true, cannot be constitutionally applied, because to do so would extend the power of Congress to subject *dehors* the reach of its authority to regulate commerce, by enabling that body to deal with mere questions of production of commodities within the states.' And the Court summarily dismissed the contention in these words: 'But all the structure upon which this argument proceeds is based upon the decision in United States v. E. C. Knight Co., 156 U. S. 1, 15 S. Ct. 249, 39 L. Ed. 325. The view, however, which the argument takes of that case, and the arguments based upon that view have been so repeatedly pressed upon this court in connection

with the interpretation and enforcement of the Anti-trust Act, and have been so necessarily and expressly decided to be unsound as to cause the contentions to be plainly foreclosed and to require no express notice.' (citing cases) 221 U. S. 1, at pages 68, 69, 31 S. Ct. 502, 519, 55 L. Ed. 619, 34 L. R. A. (N.S.) 834, Ann Cas. 1912D, 734.

Upon the same principle, the Anti-Trust Act has been applied to the conduct of employees engaged in production. *Loewe v. Lawlor*, 208 U. S. 274, 28 S. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815; *Coronado Coal Co. v. United Mine Workers*, supra. * * *

Again the court said:

"It is thus apparent that the fact that the employees here concerned were engaged in production is not determinative. The question remains as to the effect upon interstate commerce of the labor practice involved. * * *

When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war? We have often said that interstate commerce itself is a practical conception."

Again the court said:

"And of what avail is it to protect the facility of transportation, if interstate commerce is throttled with respect to the commodities to be transported!"

In *United States v. F. W. Darby Lumber Company, et al.*, 61 Supreme Court, 451, the court was considering the Fair Labor Standards Act, 29 U. S. C. A., paragraph 215(a), (1, 2 and 5), *February 3, 1941*. This act is drafted with a different approach to the commerce clause. It applies to goods "produced for interstate commerce" and attempts to set a minimum wage and maximum hours of employment in industries producing goods for interstate commerce while the National Labor Relations Act applies to labor "affecting interstate commerce." The case reviews the various decisions dealing with interstate commerce and overrules *Hammer v. Dagenhart*, 247 U. S. 251, 38 Supreme Court, 529. The court distinguishes the cases which merely affect interstate commerce like *Heisler v. Thomas Colliery Company*, 260 U. S. 245, and other taxing cases within the police power of the state, but which do not in anywise attempt to regulate interstate commerce. It is a most instructive case and indicates the final development of a wide and broadened philosophy as to the comprehensive nature of the commerce clause of the Federal Constitution.

5. LOCAL COURT DECISIONS.

Raisin Proration Zone No. 1 filed two actions against appellee and one against Sohn Singh, from whom he had purchased raisins, then the director of agriculture filed an action against appellee. All actions were in the Superior Court of the State of California, in and for the County of Fresno.

The first case came before Hon. Glenn L. Moran, Judge, who, in deciding the cause, referred to what is commonly known as the *Lemon Prostate case*, 35 Fed. Supp. 108, by Judge Stephens (Circuit Judge), and Hollzer and St. Sure (District Judges), and stated:

"that the enforcement of the program of the plaintiff in this action, involving the raisin industry as it affects the defendant herein, as a producer and processor of raisins, constitutes as great and material a violation of this defendant's rights under the interstate commerce clause of the United States Constitution as the lemon program, covered by the above cited case, was of the plaintiff's rights therein; and

IT IS THE CONCLUSION OF THIS COURT: That the opinion and decision of the court in the above cited cases, and with which this court concurs and agrees, is sound, logical and amply supported by many authorities and decisions, and should form the basis for this court's decision herein. * * *

The second case came before Hon. H. Z. Austin, Judge, and the *Sohn Singh* case came before Hon. Ernest Klette, Judge, and the action by the director of agriculture came before Hon. H. Z. Austin, Judge. In each of the cases the Superior Court sustained a general demurrer to the complaint without leave to amend; apparently taking judicial knowledge of the character and nature of the raisin industry and its predominant feature as a part of interstate commerce.

These cases are now on appeal in the District Court of Appeal of the Fourth Appellate District, pending

on the ready to submit calendar, awaiting the decision of this cause by the Supreme Court.

CONCLUSION.

The raisin prorate program is an arbitrary attempt to control the price and flow of raisins into interstate commerce. It embargoes such sale and commerce as to 70% of all raisins produced by grower and packer alike. There isn't any possible outlet for 90% to 95% of all raisins produced in the zone except in interstate commerce. It is illogical to contend that to forbid sale and purchase for such purpose is not directly obstructing and interfering with interstate commerce.

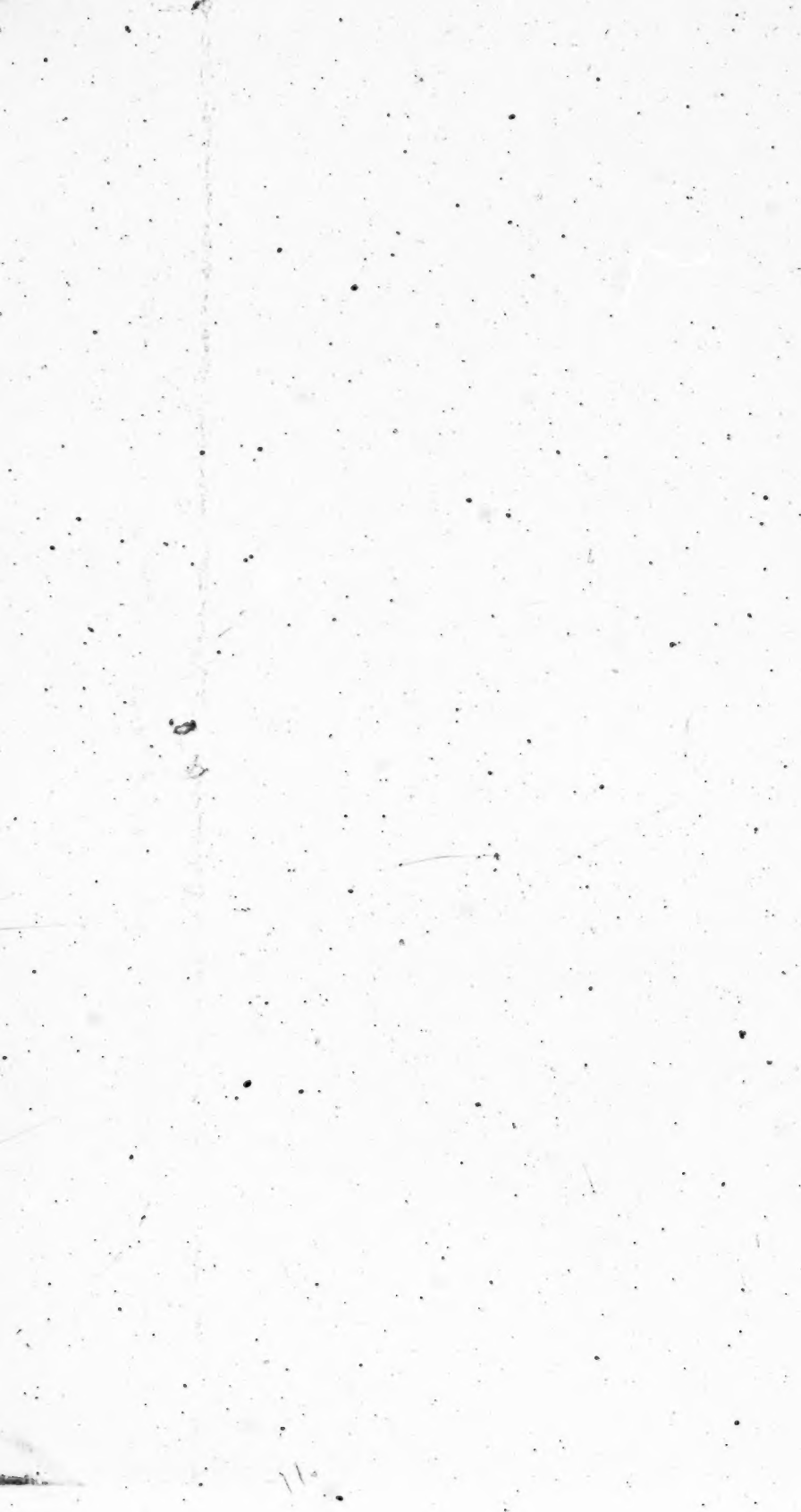
The damage which the evidence shows appellee would suffer is in excess of \$3000.00. This gives the court jurisdiction. The evidence further shows that 90% of Brown's sales were for interstate shipment, likewise his production and purchases were for a similar purpose. The decision of the District Court should be affirmed.

Dated, Fresno, California,
May 1, 1942.

Respectfully submitted,

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In the Supreme Court

OF THE
United States

OCTOBER TERM, 1942

No. 46

W. B. PARKER, Director of Agriculture,
AGRICULTURAL PRORATE ADVISORY COM-
MISSION, RAISIN PRORATION ZONE No. 1,
et al.,

Appellants,

vs.

PORTER L. BROWN,

Appellee.

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U. S. C. A., Title 7, Section 610, subd. (j)	32, 49
U. S. C. A., Title 15, Section 1	17
U. S. C. A., Title 15, Section 2	18
U. S. Penal Code, Sections 19, 20	28, 29

Miscellaneous

Deering's California Codes and General Laws, 1939 Supp., Act 143a, Sections 22.5, 24, 25	6
"Grapes, Raisins and Wines", published in 1939, page 142	18
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In the Supreme Court

OF THE
United States

OCTOBER TERM, 1942

No. 46

W. B. PARKER, Director of Agriculture,
AGRICULTURAL PRORATE ADVISORY COM-
MISSION, RAISIN PRORATION ZONE No. 1,
et al.,

Appellants,

VS.

PORTER L. BROWN,

Appellee.

SUPPLEMENTAL BRIEF FOR APPELLEE.

During the oral presentation of the above case to the court, it was suggested by members of the court that the Sherman Anti-Trust Law, the Agricultural Adjustment Act, the due process clause of the Fourteenth Amendment, and other federal laws might be applicable and that it would be desirable to have the case argued upon any and all applicable federal laws. Later the court made an order for reargument,

to include a due consideration of applicable federal laws.

Responsive to the court's order, appellee will discuss the case with respect to the applicability of

- a. The Sherman Anti-Trust Law.
- b. The Clayton Act.
- c. The Agricultural Adjustment Act.
- d. Due process clause of the Fourteenth Amendment, and
- e. Capper-Volstead Act.

Preliminary to a discussion of those statutes, it seems pertinent to call attention to certain Supreme Court decisions holding that the present suit in equity is properly brought against the various defendants, allegedly state officials. State officials may be enjoined from enforcing an unconstitutional Act.

Ex parte Young, 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714;

Hopkins v. Clemson Agricultural College, 221 U. S. 636-643, 55 L. Ed. 890;

Looney v. Crane Co., 245 U. S. 178-191, 38 S. Ct. 85, 62 L. Ed. 230-6;

Gibbs v. Buck, 307 U. S. 66, 59 S. Ct. 725, 83 L. Ed. 1111.

SHERMAN ANTI-TRUST LAW.

The application of the Anti-Trust Law will be under headings as follows:

1. Pleadings—complaint and answer.
2. Stipulation as to facts.
3. Judgment—findings of fact.
4. Decision of three judge court—cross-demand.
5. Sufficiency of the pleadings.
6. Authorities.

1. Pleadings—complaint and answer.

The first paragraph of the first amended complaint alleges:

“That jurisdiction is founded on the existence of Federal questions and amount in controversy; that the action arises under the Constitution of the United States, Article I, Section 8, Clause 3, and under Title 15, Sections 1 to 33 of the United States Code, as hereinafter more fully appears; that the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3000.00.” (R. 1.)

The second paragraph alleges: That Raisin Proration Zone No. 1 is organized under the Agricultural Prorate Act of the State of California (see Chap. 754, Statutes of California, 1933, and Amendments); and that the defendants are the officers of the Agricultural Probate Advisory Commission and the Zone (R. 1); that W. B. Parker is the Director of Agriculture of the State of California. (R. 2.)

Paragraph III alleges that appellee Brown, during the life of the program, has owned 100 acres of real property improved to bearing grapevines. (R. 2.)

Paragraph IV alleges:

"That the program committee of said zone has attempted to institute a seasonal marketing program which defendants declared effective September 7, 1940; that defendants threaten to enforce said alleged seasonal marketing program against plaintiff; that said program provides briefly that all sub-standard raisins shall be withdrawn from the market;"

(The terms of the program are then outlined.)

"and that no packer or handler of raisins may purchase any standard * * * raisins from any of the growers in said zone until said growers have complied with all of the foregoing requirements and received primary and secondary certificates from said zone evidencing such compliance." (R. 2.)

Paragraph V alleges: That approximately 95% of the raisins grown by plaintiff and the other producers in the Zone are sold in interstate or foreign commerce; "that plaintiff is deprived by reason of said act and program of his right to dispose of his raisins in interstate and foreign commerce". (R. 3.)

Paragraph VI alleges: That heretofore plaintiff has engaged in the business of packing, shipping, and selling in interstate and foreign commerce raisins produced by himself and raisins purchased by plaintiff from other persons; that defendants will compel delivery of all sub-standard raisins and 70% of standard raisins to the Zone; that defendants will, unless enjoined, withhold all sub-standard raisins and the 20%

surplus pool from the normal channels of trade, and another 50% will be allowed to enter the channels of trade only upon such terms and conditions as defendants prescribe; that 30% of the raisins may be sold by the grower, provided he shall have complied with the other parts of the program and paid \$2.50 per ton on the 30%; that defendants threaten a virtual embargo on the shipment of raisins in interstate commerce; that prior to the adoption of said marketing program plaintiff entered into contracts to sell raisins in interstate commerce; that if the program is enforced,

"plaintiff will be unable to secure raisins with which to fulfill said contracts and plaintiff will be subjected to liability on said contracts in approximately the sum of \$8000.00 and will; in addition, lose profits on said contracts in approximately an equal amount; that plaintiff expects and will be able to ship out of this state during the current marketing season 2500 tons of raisins in addition to the raisins covered by said contracts; that as aforesaid, if defendants enforce said act and program, plaintiff will be unable to secure said 2500 tons of raisins for said shipment; that plaintiff would make a profit on said 2500 tons of raisins at the rate of from \$5.00 to \$12.00 per ton; and that unless defendants are enjoined from enforcing said program, plaintiff will lose such profit."
(R. 3 and 4.)

Paragraph VII alleges:

"That the 1940 raisin crop is now ready for the market and that the normal market for such raisins will be lost after December 20, 1940; that unless said program is quickly declared uncon-

stitutional, the plaintiff and all the growers in said zone will be irreparably damaged by the loss of such market; * * *." (R. 4.)

Paragraph VIII alleges: That said act and program provides civil and criminal penalties so unusual, oppressive, and unreasonable that plaintiff will be precluded from asserting his rights independently and challenging in court by defensive tactics the validity of said act and program (see 1939 Supp., Deering's California Codes and General Laws, Act 143a, Sections 22.5, 24 and 25, wherein severe penalties are imposed, both civil and penal); that the enforcement of the program will cause plaintiff to lose an average of \$9.00 per ton per year on raisins grown by plaintiff; that plaintiff produces an average of 200 tons per year; that defendants will continue said program in force for many years in the future unless enjoined. (R. 4.)

Paragraph X alleges:

"That defendants will, unless restrained, attempt to enforce and procure the enforcement of, against plaintiff, the civil and criminal penalties provided in said act; that defendants will, unless restrained, attempt to enforce and procure the enforcement of the civil and criminal penalties provided in said act against growers from whom plaintiff purchases raisins and against other persons with whom plaintiff has dealings in raisins, thereby preventing plaintiff from obtaining raisins for interstate shipment; that plaintiff has no adequate remedy at law whereby plaintiff can prevent the filing of civil or criminal actions

against him or against said persons dealing with him." (R. 5.)

Paragraph XI alleges:

"That defendants are maintaining at and near plaintiff's place of business watchers and spies for the purpose of ascertaining from whom plaintiff purchases raisins and for the purpose of intimidating such sellers and preventing the sale of raisins to plaintiff for shipment in interstate commerce; * * *." (R. 5.)

Paragraph XII alleges that defendants have received approximately 100,000 tons of raisins and

"that defendants are now and intend to continue withholding said raisins from interstate commerce in restraint of trade and for the purpose of maintaining the monopoly prices." (R. 5.)

In the answer defendants allege as follows:

Admit and allege that defendants, pursuant to the marketing program for raisins as amended in effect in said Raisin Proration Zone No. 1, did approve and adopt a seasonal marketing program for raisins for 1940-41, effective September 7, 1940, and that defendants have enforced and intend to enforce such seasonal marketing program for raisins against plaintiff and all other persons subject to the provisions thereof. (P. IV, R. 7.)

Admit that plaintiff has been engaged in the business of packing, shipping and selling raisins in intrastate, interstate and foreign commerce, and that some of such raisins were produced by plaintiff and the bal-

ance thereof plaintiff purchased from other producers and was engaged as a packer and handler of such raisins; and admit that so far as defendants know plaintiff presumably desires to continue such business. (P. VI, R. 9.)

Admit that defendants will to the best of their ability, unless restrained, endeavor to enforce and procure the enforcement of all of the provisions of the Agricultural Prorate Act and of the proration program for raisins thereunder against plaintiff and all other persons subject thereto. (P. X, R. 10.)

2. Stipulation as to facts.

Producers of raisins pick, dry and cure the raisins on the farm, then sell them to packers. (Pp. 4, 5, 6 and 7, R. 15.)

Small packers do not have any carry-over from season to season and purchase their raisins for commercial sale and distribution to the public. (P. 8, R. 16.)

90 to 95% of all raisins consumed as raisins and for human consumption are consumed outside the State of California. (P. 9, R. 16.)

That some producers contract for the sale of their raisins several weeks in advance of the delivery of said raisins. (P. 11, R. 17.)

The foregoing excerpts from the pleadings and the stipulation of facts show that the defendants have set up a program for the handling of raisins by which the grower is deprived of the possession of 70% of his raisins. 20% of the raisins are placed in a surplus

pool and disposed of not in interstate commerce but for by-product purposes. 50% of the raisins are sold and disposed of at such price and in such quantities and at such times as the program committee in its discretion may determine (all of which is in harmony with Section 19.1 of the Act). In order to make the powers of the committee unlimited and without restriction, Section 19.1 provides:

"The program committee shall have title to all such pools and shall handle all commodities received by a pool and account for the same to the producers beneficially interested on a pool basis."

While the Act contains provisions authorizing the control of production of raisins, there is not a word in the program, as formulated by the program committee and approved by the Director of Agriculture, which attempts to control the production of raisins. The first point at which it assumes any control over the grower's product is after the grape has been severed from the vine, properly dried and cured by the grower, boxed and ready for delivery to the packer for cleaning, stemming, cap stemming and boxing for delivery in interstate and foreign commerce.

3. Judgment—findings of fact.

The court made special findings of fact as follows:

That defendants are attempting to enforce the Agricultural Prorate Act (Chapter 754, California Statutes 1933) as amended, and are claiming penalties in the amount of \$13,000.00 against the plaintiff; that defendants have directly interfered with and ob-

structed plaintiff's business and damaged plaintiff in excess of \$3000.00, exclusive of interest and costs, and that the matter in controversy exceeds \$3000.00, exclusive of interest and costs. (P. I, R. 52.)

That an original program was adopted in 1937, and an amended seasonal program for marketing raisins for 1940-1941 was duly and regularly adopted and approved and became effective September 7, 1940. (P. III, R. 54.)

That in accordance with said seasonal program 20% of all standard raisins of the 1940 crop shall be delivered to a surplus pool, for which \$27.50 per ton shall be advanced for Muscat and Thompson Seedless raisins, and \$25.00 per ton for Sultanás; that 50% of the standard raisins shall be delivered into a stabilization pool, and that the producers shall receive \$55.00 per ton for Muscat and Thompson Seedless raisins, and \$50.00 per ton for Sultanás; and that the balance of such standard raisins, to-wit, 30%, may be disposed of by the grower without restriction, provided he shall pay \$2.50 per ton for each ton of the so-called "free tonnage", provided he has prior thereto delivered 70% into the surplus and stabilization pools. (P. IV, R. 54.)

That the standard raisins in the surplus pool cannot be sold prior to January 1 of the marketing season in which such pool is established; that the sale shall be made in accordance with the methods and at the prices which in the judgment of the committee or its authorized agency and the Director are the most advantageous to the producers. (P. IV, R. 55.)

That stabilization pool raisins shall be sold as soon as practicable after delivery of same to any agency authorized to receive such raisins. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the committee or its authorized agency and the Director are the most advantageous to the producers of raisins; provided, however, that no sales of raisins from a stabilization pool, * * *, shall be made at less than the prevailing market price for raisins of the same variety and grade on the date of sale. (P. IV, R. 55 and 56.)

That 90% to 95% of such raisins produced in said Zone are consumed outside the State of California. (P. VI, R. 56 and 57.)

That raisins are completely cured and dried on the farm.

"Such process is entirely accomplished on the premises where the grapes are grown, and when properly done, the grapes have been entirely dried and cured and are a wholesome food and sound article of commerce. They are then substantially ready for market as raisins. The process of cleaning, stemming, cap-stemming, seeding (Muscats only), grading, sorting and packaging in various sized containers, which is not uniform in packing plants, tends to make the raisins more desirable commercially and thus create a greater demand for them in the market, but is not essential to production."

(P. VIII, R. 57 and 58.)

That plaintiff is both a producer and packer of raisins, and that he produced approximately 200 tons.

of raisins in said Zone in the year 1940. That no seasonal marketing program for raisins was adopted or in effect in 1939. That plaintiff did not in any manner participate in the 1940 seasonal program. That the 1938 seasonal marketing program did not have any provision for a stabilization pool. That packers make their purchases and take delivery in California; that sales are completed when the delivery is made; that before packing and shipping such raisins the packers clean, stem and package them, making the raisins more desirable commercially; that such operation by the packers is not essential to production. (P. IX, R. 58.)

That plaintiff as a packer contracts for delivery of a very large percentage of the raisins he handles directly into interstate and foreign commerce; that on September 7, 1940, plaintiff had substantial orders for out of state delivery of raisins which he could not fill by purchase of "free tonnage" and could not fill at all because of said pools without complying with said program; that defendants in enforcing said program have directly and substantially interfered with and obstructed plaintiff's said business and have directly and substantially burdened interstate and foreign commerce. (P. X, R. 59.)

That defendants have attempted to enforce said act as implemented by said program against plaintiff and against those persons who have sold raisins to plaintiff since September 7, 1940; that since said date said defendants have maintained watchers at and near plaintiff's place of business for the purpose of ascertaining from whom plaintiff purchases raisins and for the

purpose of preventing sales of raisins to plaintiff in violation of said program; that defendants threaten to continue to enforce said program against plaintiff and persons selling 1940 crop raisins to him; that defendants have attempted, and are attempting and threatening, to force plaintiff and all other raisin growers to deliver and dispose of the 1940 crop by and through said program, and have attempted, and are attempting, to prevent disposal of such raisins except through said program. (P. XI, R. 59.)

As part of the conclusions of law, the court states that said seasonal marketing program constitutes and is a direct, substantial, and illegal interference with interstate and foreign commerce in wholesome and sound raisins. (P. II, R. 60.)

That plaintiff is entitled to an injunction enjoining defendants from enforcing said program against plaintiff or anyone dealing with plaintiff in his capacity as a producer, buyer, packer or handler of wholesome and sound raisins, and enjoining defendants from in any manner annoying, harassing or molesting plaintiff or persons doing such business with him. (P. III, R. 60.)

The final judgment conforms to the findings of fact. (R. 61 and 62.)

The findings of fact conform to the allegations of the first amended complaint and show that the defendants are attempting to control the quantity, time of flow, and the price of raisins in interstate commerce, a product which cannot find any consumptive outlet except in interstate commerce, that is, as to 90% to

95% of the raisins which are used for human consumption, and that is practically the only means by which they are ultimately disposed of.

4. Decision of three judge court—cross-demand.

The Agricultural Prorate Act not only required the defendants to formulate a program for the marketing and handling of raisins but it required them to enforce the same. Defendants plead the adoption of a program and their intention and purpose of enforcing the same. In the majority opinion of the court we cite at page 30 of the record the following:

"The defendant Proration Zone No. 1 filed a cross-complaint praying that the Act and program thereunder be declared a valid exercise of the police power of the State of California; that the plaintiff be enjoined from refusing to comply therewith, and for an accounting and damages for his failure to comply in the past."

While the cross-complaint of defendants was not made a part of the record on appeal, the opinion of the court was. The above quotation is made for the purpose of showing the persistent attitude of the defendants in their attempt to interfere with interstate commerce in raisins.

The opinion further recites:

"It will be seen that with the Act and program thereunder in operation, the plaintiff as packer who contracts for delivery of a very large percentage of the raisins he handles directly into interstate commerce, cannot freely purchase raisins directly from the producer, for, except as

to the 'free tonnage' raisins, he must make his purchase from the Zone representatives under restrictions herein mentioned, and as to the 30% free tonnage he must make his purchases only when the raisins are accompanied by the secondary certificate showing full compliance with the program.

There is in evidence a copy of the 'Stabilization Pool Sales Policy' set up by the Zone Agent, which recites that the Program Committee reserves the right to determine the eligibility of packers to purchase stabilization pool raisins, and that in order to be eligible to purchase raisins from the committee a packer must be completely current in respect to payment of secondary proration certificate fees. Another item taken into consideration in the determination of eligibility to purchase raisins is whether or not there has been complete proration of all raisins in the packer's possession or on his premises.

It comes to this, that the plaintiff cannot, without violating the provisions of the program, purchase any raisins for his interstate or intrastate business from a grower who does not have the certificate showing his full compliance with the program, and the evidence is clear that plaintiff took orders for out-of-state delivery which he could not fill by purchase of so-called 'free tonnage' raisins and could not fill at all because of the program pool without complying with the program. Nor can he under the regulations prescribed by the Program Committee purchase any raisins deposited in the stabilization pool if he has on his premises or in his possession any raisins that are not accompanied by the certificate showing proration by the grower thereof." (R. 35.)

5. Sufficiency of the pleadings.

Briefly, the complaint sets forth in substance the terms and provisions of the Agricultural Prorate Act, the terms and provisions of the raisin program adopted and put into effect by appellants (hereinafter referred to as defendants), and the intention to and the actual control by defendants of the entire raisin business of California in relation to the shipment and sale of raisins in interstate commerce. It is alleged that all substandard raisins and inferior raisins are taken over by defendants and withdrawn from the market; that 70% of the balance of the producers' raisins are taken control of by the defendants—20% thereof are placed in a surplus pool, to be sold by defendants for by-product purposes, and 50% are to be sold by defendants at such times, in such amounts, and at such prices as the defendants shall determine; that the producer may dispose of the remaining 30% of the balance of his raisins, provided he has submitted to the program in all other respects and pays \$2.50 per ton on the 30%; that 90% to 95% of all raisins consumed must be sold in interstate and foreign commerce.

Plaintiff, as both a producer and packer, is denied the right to sell and dispose of his own raisins in interstate commerce; he is denied the right to buy from other producers to fill and meet his interstate contracts for the sale of raisins; defendants are attempting to monopolize and control the entire raisin business in interstate commerce. In order to effectually prevent plaintiff from carrying on his business, de-

fendants maintain watchers at plaintiff's place of business to prevent others selling and delivering raisins to plaintiff. In order to make their control of the raisin business complete, they have filed actions against the plaintiff, demanding penalties in the sum of \$13,000.00, and, in fact, in the present action they have cross-complained, asking for specific enforcement of the program against plaintiff, for an accounting, and for damages.

As to the sufficiency of the allegations see *Anderson v. Shipowners' Association of Pacific Coast; et al.*, 272 U. S. 359, 47 Sup. Ct. 125.

The complaint combines in one cause of action the necessary allegations to show a combination in restraint of interstate commerce and a combination for the purpose of monopolizing interstate commerce in raisins.

6. Authorities.

The pleadings, evidence, findings and judgment show a violation of two sections of the Sherman Anti-Trust Law.

In U. S. C. A., Title 15, Section 1, illegal contracts, etc., are defined as follows:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal:
* * * Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, * * *"

In U. S. C. A., Title 15, Section 2, we find this definition:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *."

In Report No. 134, 2d Series, of the U. S. Tariff Commission (of which this court takes judicial notice), entitled: "Grapes, Raisins and Wines", published in 1939, the following appears at page 142:

"Commercial production of raisins in the United States is confined to California. There has been a small production in Arizona, New Mexico, and Utah but it has been too insignificant to be recognized by the trade, and statistics of production are not available. In California the industry is located in the upper San Joaquin Valley, in the central part of the state, principally in Fresno County, but spreads into Tulare, Kings, Madera, and other adjoining counties."

Defendants had under their control all raisins produced in the United States, with the exception of the bleached Thompson raisins, which were of negligible amount. Defendants were, by Agricultural Prorate Law and their official authority, attempting to force all raisin growers to submit to the raisin program, also to control the amount and time and manner of shipment and the sale and the price of all raisins produced within the United States.

Defendants insist that their conduct relates only to the production of raisins, and not to them as an article of interstate commerce. In view of the fact that the raisins haven't any market except in interstate and foreign commerce, it is idle to say that the acts of the defendants do not seek to and do not control and burden interstate commerce. However, if their acts related only to production, the result of their acts would still be an interference with and a burden upon interstate and foreign commerce.

In *Coronado Coal Company, et al. v. United Mine Workers of America*, 268 U. S. 295, 69 L. Ed. 963, 45 Supreme Court 551, at page 556, the court was considering the action of the miners in destroying the mine and its property in order to avoid shipment of the product in interstate commerce. It held the conduct of the miners in violation of the Anti-Trust law and said:

"The mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-Trust Act. *United Mine Workers v. Coronado Co.*, 259 U. S. 344, 408, 409, 42 S. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762; *United Leather Workers v. Herkert*, 265 U. S. 457, 471, 44 S. Ct. 623, 68 L. Ed. 1104, 33 A. L. R. 566; *Industrial Association*

v. United States, 268 U. S. 64, 45 S. Ct. 403, 69 L. Ed. 849, decided April 13, 1925. We think there was substantial evidence at the second trial in this case tending to show that the purpose of the destruction of the mines was to stop the production of nonunion coal and prevent its shipment to markets of other states than Arkansas, where it would by competition tend to reduce the price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines, and that the direction by the District Judge to return a verdict for the defendants other than the International Union was erroneous."

See

Apex Hosiery Co. v. Leader, 310 U. S. 469, 60 Sup. Ct. 982, defining purpose of anti-trust law.

In *Standard Oil Company of Indiana, et al. v. United States*, 283 U. S. 163, 75 L. Ed. 926, 51 Supreme Court 421, 423, the court was considering a contract made between three gasoline processing patentees with respect to the effect of the agreement on interstate commerce and stated:

"Moreover, while manufacture is not interstate commerce, agreements concerning it which tend to limit the supply or to fix the price of goods entering into interstate commerce, or which have been executed for that purpose, are within the prohibitions of the Act. *Swift & Co. v. United States*, 196 U. S. 375, 397, 25 S. Ct. 276, 49 L. Ed. 518; *Cronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310, 45 S. Ct. 551, 69 L. Ed. 963; *United States v. Trenton Potteries Co.*, 273 U. S. 392, 47

S. Ct. 377, 71 L. Ed. 700, 50 A. L. R. 989. And pooling arrangements may obviously result in restricting competition. Compare *Northern Securities Co. v. United States*, 193 U. S. 197, 326, 24 S. Ct. 436, 48 L. Ed. 679. The limited monopolies granted to patent owners do not exempt them from the prohibitions of the Sherman Act and supplementary legislation. *Standard Sanitary Manufacturing Co. v. United States*, 226 U. S. 20, 33 S. Ct. 9, 57 L. Ed. 107; *Virtue v. Creamery Packing Manufacturing Co.*, 227 U. S. 8, 33 S. Ct. 202, 57 L. Ed. 393; Compare *United Shoe Machinery Co. v. United States*, 258 U. S. 451, 42 S. Ct. 363, 66 L. Ed. 708; *United States v. General Electric Co.*, 272 U. S. 476, 47 S. Ct. 192, 71 L. Ed. 362."

The California Prorate Act and the Raisin Prorate Program bottomed upon the same made it illegal for a grower to sell to Brown, and made it illegal for Brown to buy from a grower, unless there had been on the part of each of them a complete submission to the program, but buying and selling for the purpose of interstate commerce is a part of interstate commerce.

In passing upon a price fixing provision relative to milk under the Federal Statute, in *United States v. Rock Royal Co-op.*, 59 Sup. Ct. 993-1010, 307 U. S. 533, decided June 5, 1939, the court referred to and followed the *Lemke* case, hereinafter cited, and stated:

"The challenge is to the regulation 'of the price to be paid upon the sale by a dairy farmer who delivers his milk to some country plant'. It is urged that the sale, a local transaction, is fully completed before any interstate commerce begins

and that the attempt to fix the price or other elements of that incident violates the Tenth Amendment, U. S. Const. But where commodities are bought for use beyond state lines, the sale is a part of interstate commerce."

If, in that case, the sale was not a local transaction but an incident of interstate commerce, then in the instant case the sale by the producer of raisins and the purchase by packer Brown is an incident of interstate commerce and not subject to state control.

In *Currin v. Wallace*, 306 U. S. 1, 59 Supreme Court 379, the court said:

"* * * Where goods are purchased in one State for transportation to another, the commerce includes the purchase quite as much as it does the transportation. * * *"

In *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1, 49 S. Ct. 1, the court, in speaking of interstate commerce, said:

"In determining what is interstate commerce, courts look to practical considerations and the established course of business. *Swift & Co. v. United States*, 196 U. S. 375, 398, 49 L. ed. 518, 525, 25 Sup. Ct. Rep. 276; *Lemke v. Farmers Grain Co.*, 258 U. S. 50, 59, 66 L. ed. 458, 464, 42 Sup. Ct. Rep. 244; *Binderup v. Pathe Exch.*, 263 U. S. 291, 309, 68 L. ed. 308, 316, 44 Sup. Ct. Rep. 96; *Shafer v. Farmers Grain Co.*, 268 U. S. 189, 198, 200, 69 L. ed. 909, 914, 915, 45 Sup. Ct. Rep. 481. Interstate commerce includes more than transportation; it embraces all the component parts of commercial intercourse among states.

And a state statute that operates directly to burden any of its essential elements is invalid. *Dahnke-Walker Mill Co. v. Bondurant*, 257 U. S. 282, 290, 66 L. ed. 239, 243, 42 Sup. Ct. Rep. 106; *Shafer v. Farmers Grain Co.*, supra, 199 (69 L. ed. 914, 40 Sup. Ct. Rep. 481). A state is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the state. *Pennsylvania v. West Virginia*, 262 U. S. 553, 596, 67 L. ed. 1117, 1132, 32 A. L. R. 300, 43 Sup. Ct. Rep. 658; *West v. Kansas Natural Gas Co.*, 221 U. S. 229, 255, 55 L. ed. 716, 726, 35 L. R. A. (N. S.) 1193, 31 Sup. Ct. Rep. 564. * * * Consistently with the act, all may be, and in fact nearly all is, caught for transportation and sale in interstate commerce. As to such shrimp, the protection of the commerce clause attaches at the time of the taking. *Dahnke-Walker Mill Co. v. Bondurant*, supra. *Pennsylvania v. West Virginia*, supra, 596 et seq. (67 L. ed. 1132, 32 A. L. R. 300, 43 Sup. Ct. Rep. 658)."

In *Shafer v. Farmers' Grain Co.*, 268 U. S. 189, 45 S. Ct. 481, 485, 69 L. ed. 909, the court said:

"Wheat—both with and without dockage—is a legitimate article of commerce and the subject of dealings that are nationwide. The right to buy it for shipment, and to ship it, in interstate commerce, is not a privilege derived from state laws, and which they may fetter with conditions, but is a common right; the regulation of which is committed to Congress and denied to the states by the commerce clause of the Constitution."

To same effect, see:

Grandin Farmers' Co-op. Elevator Co. v. Langer, 5 Fed. Supp. 425 (affirmed without opinion in 292 U. S. 605, 78 L. ed. 1467);

Lemke v. Farmers Grain Company, 258 U. S. 50, 66 L. ed. 458, 42 S. Ct. 244;

West v. Kansas Natural Gas Company, 221 U. S. 229, 31 S. Ct. 564, 55 L. ed. 716.

A combination to control prices locally or to monopolize control of prices locally, which directly burdens and affects interstate commerce, is a violation of the Sherman Anti-Trust Law. In *U. S. v. Wrightwood Dairy Co.*, 315 U. S. 110, 62 Sup. Ct. Rep. 523, by way of dictum, the Court said, at page 526:

“(4) Competitive practices which are wholly intrastate may be reached by the Sherman Act, 15 U. S. C. A. Paragraphs 1-7; 15 note, because of their injurious effect on interstate commerce. *Northern Securities Company v. United States*, 193 U. S. 197, 24 S. Ct. 436, 48 L. Ed. 679; *Swift & Co. v. United States*, 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518; *United States v. Patten*, 226 U. S. 525, 33 S. Ct. 141, 57 L. Ed. 333, 44 L. R. A., N. S., 325; *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 45 S. Ct. 551, 69 L. Ed. 963; *Local 167 v. United States*, 291 U. S. 293, 54 S. Ct. 396, 78 L. Ed. 804; *Stevens Co. v. Foster & Kleiser Co.*, 311 U. S. 255, 61 S. Ct. 210, 85 L. Ed. 173.”

There is no immunity for state officers who violate a federal law. In *Ex parte Young*, 209 U. S. 123-159, 52 L. Ed. 714-729, it is said:

"If the act which the state attorney general seeks to enforce be a violation of the Federal Constitution, the officer, in proceeding under such enactment, comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The state has no power to impart to him any immunity from responsibility, to the supreme authority of the United States. See *Re Ayers*, 123 U. S. 507, 31 L. Ed. 230, 8 S. Ct. 164."

He is merely proceeding under the color of an unconstitutional law.

In *Re Ayers*, supra, the court said:

"Nor need it be apprehended that the construction of the 11th Amendment, applied in this case, will in anywise embarrass or obstruct the execution of the laws of the United States, in cases where officers of a State are guilty of acting in violation of them under color of its authority. The Government of the United States, in the enforcement of its laws, deals with all persons within its territorial jurisdiction, as individuals owing obedience to its authority. The penalties of disobedience may be visited upon them, without regard to the character in which they assume to act, or the nature of the exemption they may plead in justification. Nothing can be interposed between the individual and the obligation he owes to the Constitution and laws of the United States, which can shield or defend him from their just authority; and the extent and limits of that authority the Government of the United States,

by means of its judicial power, interprets and applies for itself. If, therefore, an individual, acting under the assumed authority of a State, as one of its officers, and under color of its laws, comes into conflict with the superior authority of a valid law of the United States, he is stripped of his representative character, and subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

In *Worcester County Trust Co. v. Riley*, 302 U. S. 292-7, 58 S. Ct. 185-7, 82 L. Ed. 268, the court said:

"The Eleventh Amendment, which denies to the citizen the right to resort to a Federal Court to compel or restrain state action, does not preclude suit against a wrongdoer merely because he asserts that his acts are within an official authority which the state does not confer."

Poindexter v. Greenow, 114 U. S. 270, 5 S. Ct. 903, 913, 962, 29 L. Ed. 185.

Section 1 of the Sherman Anti-Trust Law forbids contracts or combinations in restraint of trade. Section 2 forbids monopolies in interstate trade and commerce.

Buckeye Powder Co. v. E. I. Du Pont De Nemours Powder Co., 39 S. Ct. 38, 248 U. S. 55, 63 L. Ed. 123;

United States v. Socony-Vacuum Oil Co., 60 S. Ct. 811-844-6, 310 U. S. 150, 223-8, 84 L. Ed. 1129.

The court in the above cases also lays down certain principles applicable here.

Reasonableness of prices (if such were a fact) paid by the defendants is immaterial. Economic conditions do not justify or make right a violation of the Act.

Knowledge or acquiescence of government officials in wrongdoing will not give validity or legality to the act of defendants.

310 U. S. 225-8, 60 S. Ct. 846-8.

In *Georgia v. Evans, et al.*, 62 S. Ct. 972, 86 L. Ed. 929, it was held that the word "person", as defined under the Sherman Anti-Trust Law, included a state, at least to the extent that the state might sue for treble damages where it had been injured by a combination in restraint of trade. To hold that the state is a person under that act, in the sense that it may avail itself of the procedural remedy therein provided, does not necessarily mean that the state by taking advantage of such provision would waive its immunity under the Eleventh Amendment to the Federal Constitution, which exempts it from all manner of actions to enforce obligations. Congress has the power to bestow the right to sue upon a state, but not the right to give third persons the right to sue a state. However, the question seems more academic than important for state officials who, in attempting to enforce unconstitutional state laws, combine so as to restrain interstate commerce or to create a monopoly in interstate commerce, are subject to the Sherman Anti-Trust Law, because the state cannot bestow upon them

immunity for their transgressions of the federal and superior law.

Another principle applies to the defendants who claim to be state officials. That principle is that where a state voluntarily appears in a case against it and cross-complains for enforcement of its rights, the state waives its immunity.

Clark v. Barnard, 108 U. S. 436-47, 27 L. Ed. 780, 784-5.

If a sovereign litigates, he must play the role like any other litigant and take the consequences.

United States v. National City Bank of New York, 83 Fed. (2d) 236-8;

Richardson v. Fajardo Sugar Co., 241 U. S. 44, 36 S. Ct. 476, 60 L. Ed. 879.

In the above case, after voluntarily appearing in an action, Porto Rico was compelled to pay back illegally collected taxes.

In *People of Porto Rico v. Ramos*, 232 U. S. 637, 34 S. Ct. 459, 58 L. Ed. 767, where Porto Rico voluntarily appeared as defendant in an action, the plaintiff was given judgment for \$6000.00 damages against the government. Claims of immunity in each of the above cases were denied by the Supreme Court.

Congress has considered the deprivation of a citizen's rights under the Constitution to be so serious that it has enacted Sections 19 and 20 of the U. S. Penal Code.

Under the provisions of Section 19 it is a crime to conspire to deprive any citizen "of a right or privilege secured to him by the Constitution or laws of the United States", and Section 20 makes it a penal offense for any one who "acting under color of any law * * * wilfully subjects, or causes to be subjected, any inhabitant of any state * * * to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States".

The defendants in the instant case are certainly depriving Brown of his rights, privileges and immunities under the Constitution.

A recent decision, wherein state officials who tampered with election returns were held amenable to those sections, is *United States v. Classic, et al.* (La. Primary Election Case), 313 U. S. 299, 325 (paragraph 14), 61 S. Ct. 1031-1042 (14).

CLAYTON ACT.

The Clayton Act is merely a supplemental enactment to that of the Sherman Anti-Trust Act, enlarging and broadening the scope of the anti-trust laws. It has to do with discrimination in sales and discounts which amount to discriminations in sales price, whereby control of price in interstate commerce and the development of monopolies in interstate commerce may be brought about. It also prohibits any contracts or agreements restraining a buyer from buying or

dealing in products of competing vendors. A procedure is outlined for redress of the wrong brought about by any violation of the anti-trust laws. The acts of the defendants in the instant case do not seem to conflict with any of the provisions of the Clayton Act, but the procedural provisions of the Clayton Act apply and plaintiff's action sufficiently sets forth facts to bring them within the protection of the procedural provisions of the Clayton Act.

AGRICULTURE ADJUSTMENT ACT.

U.S.C.A. Title 7, Sections 601 to 611, inc. (613).

Interstate commerce is a matter subject to the control of Congress to the exclusion of state control. Even though Congress does not act, the state is powerless to act. In *Simpson v. Shepard*, 230 U. S. 352, 33 Supreme Court 729, 57 Lawyer's Edition 1511, the court said:

"If a state enactment imposes a direct burden upon interstate commerce, it must fall regardless of federal legislation. The point of such an objection is not that Congress has acted, but that the state has directly restrained that which, in the absence of federal regulation should be free. (57 Law. Ed., p. 1540.)

"The grant in the Constitution of its own force, that is, without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand

that, if regulated at all, their regulation should be prescribed by a single authority. It has repeatedly been declared by this court that as to those subjects which require a general system of uniformity of regulation, the power of Congress is exclusive. * * *

"The principle which determines this classification underlies the doctrine that the states cannot, under any guise, impose direct burdens upon interstate commerce. For this is but to hold that the states are not permitted directly to regulate or restrain that which, from its nature, should be under the control of the one authority, and be free from restriction, save as it is governed in the manner that the national legislative constitutionality ordains. (57 Law. Ed., p. 1541.)"

The North Dakota cases, that is, the *Lemke*, *Shafer*, and *Grandin* cases, lay down a similar principle of law.

An outline of the provisions of the Agricultural Adjustment Act will show that Congress has placed upon the shoulders of the Secretary of Agriculture the duty to ascertain and determine when there shall be, and the nature of the regulation of, interstate commerce in agricultural commodities. In U. S. C. A. Title 7, Section 601, it is declared:

"It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national pub-

lie interest, and burden and obstruct the normal channels of interstate commerce. May 12, 1933, c. 25 Title 1, Sec. 1, 48 Stat. 31; June 3, 1937, c. 296, Sec. 1, 2(a), 50 Stat. 246."

In Section 602, Congress sets forth its policy as follows:

"It is hereby declared to be the policy of Congress:

"(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *

"(2) To protect the interest of the consumer by * * *, (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

The state prorate act enforces no such national policy.

In Section 610, Subdivision (j), interstate or foreign commerce is specifically defined as:

"The term 'interstate or foreign commerce' means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the

District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this chapter (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. As used herein, the word 'State' includes Territory, the District of Columbia, possession of the United States, and foreign nations."

The provisions of Section 608c require the Secretary of Agriculture from time to time to issue orders respecting the handling of agricultural products (including fruits, which includes raisins) in interstate commerce. These orders of the Secretary of Agriculture constitute a program for the proper handling and marketing of such products. Paragraph (6) of Section 608c contains an outline of the order which

the Secretary of Agriculture may make respecting the matter with regard to limitation of quantity, quality, grade, standard, etc. He shall also provide for the handling of surplus products and provide for reserve pools. Paragraph (7), Subdivision (C) of Section 608c, requires that the Secretary of Agriculture shall select and designate an agency or agencies defining their powers and duties. In other words, the agency or agencies are the administrative officers of the program, subject, of course, to the control at all times of the Secretary of Agriculture. Paragraph (8), Section 608c, provides that before putting the program of the Secretary of Agriculture into operation, it must be approved by 50% of the handlers of the agricultural products. Subdivisions (A) and (B) of Paragraph (8), Section 608c, provide that there must be an acceptance of the program by two-thirds of the producers as well as producers who have produced for market at least two-thirds of the volume of such commodity. Other paragraphs of this section relate to variations in the program, in the installation of the same, regional control, etc. All, however, more specifically define and outline the authority of the Secretary of Agriculture in establishing and inaugurating the program. Section 610 vests in the Secretary of Agriculture plenary power for the selection of employees and for the appointment and selection of local committees, associations of producers, and others to administer the program.

The foregoing outline of Agricultural Adjustment Act indicates not only that Congress recognizes its

right and duty of exclusive control of interstate commerce, but it also recognizes its duty to control all acts and matters which directly affect and burden interstate commerce, even when separately considered might be considered local or intrastate matters. The mere fact that the program set up by the Secretary of Agriculture may not be inaugurated because the requisite number of producers and handlers do not vote for it does not withdraw from Congress the power of control or the right of control, nor increase the power of the states over such matters, neither does it give the states a license or permit to assume such control.

In *Oregon-Washington Railroad & Navigation Company v. State of Washington*, 270 U.S. 87, 46 S. Ct. 279, 70 L. Ed. 482, the court had for consideration an Act of the State of Washington prohibiting the importation into the state of diseased alfalfa seed from adjoining states. By the Act of Congress of August 20, 1912, and subsequent amendments, it is made unlawful to import or offer for entry into the United States, any nursery stock unless permit had been issued by the Secretary of Agriculture under regulations prescribed by him. Section 8 of the act as amended gives the Secretary of Agriculture of the United States authority to quarantine any state, territory, or district of the United States, or any portion thereof, when he shall determine that such quarantine is necessary to prevent the spread of a dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and

throughout the United States. The regulation was to apply to all manner of plants, fruits, vegetables, seeds, etc. The act further provided:

“That it shall be the duty of the Secretary of Agriculture, when the public interests will permit, to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, and method and manner of delivery and shipment of the class of nursery stock or of any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from a quarantined state or territory or district of the United States, or quarantined portion thereof, into or through any other state or territory or district; and the Secretary of Agriculture shall give notice of such rules and regulations as hereinbefore provided in this section for the notice of the establishment of quarantine: Provided, That before the Secretary of Agriculture shall promulgate his determination that it is necessary to quarantine any state, territory, or district of the United States, or portion thereof, under the authority given in this section, he shall, after due notice to interested parties, give a public hearing under such rules and regulations as he shall prescribe, at which hearing any interested party may appear and be heard, either in person or by attorney.”

The Supreme Court said:

"It is impossible to read this statute and consider its scope without attributing to Congress the intention to take over to the Agricultural Department of the Federal government the care of the horticulture and agriculture of the states, so far as these may be affected injuriously by the transportation in foreign and inter-state commerce of anything which by reason of its character can convey disease to and injure trees, plants or crops. All the sections look to a complete provision for quarantine against importation into the country and quarantine as between the states under the direction and supervision of the Secretary of Agriculture."

The court distinguished the case of *Reid v. Colorado*, 187 U. S. 137, by saying that the federal statute there involved was one which invited and brought about state and federal cooperation in the enforcement of quarantine regulations relative to animals, saying:

"Indeed the Commissioner of Agriculture in that case was to aid the state authorities in their quarantine and other measures from Federal appropriation. The act we are considering is very different. It makes no reference whatever to cooperation with state authorities. It proposes the independent exercise of Federal authority with reference to quarantine in interstate commerce. It covers the whole field, so far as the spread of the plant disease by interstate transportation can be affected and restrained. With such authority vested in the Secretary of Agriculture, and with such duty imposed upon him, the state laws of quarantine that affect interstate commerce and

thus Federal law cannot stand together. The relief sought to protect the different states, in so far as it depends on the regulation of interstate commerce, must be obtained through application to the Secretary of Agriculture."

The court then concludes:

"It follows that pending the existing legislation of Congress as to quarantine of diseased trees and plants in interstate commerce, the statute of Washington on the subject cannot be given application. It is suggested that the states may act in the absence of any action by the Secretary of Agriculture; that it is left to him to allow the states to quarantine, and that if he does not act there is no invalidity in the state action. Such construction as that cannot be given to the Federal statute. The obligation to act without respect to the states is put directly upon the Secretary of Agriculture whenever quarantine, in his judgment, is necessary. When he does not act, it must be presumed that it is not necessary. With the Federal law in force, state action is illegal and unwarranted."

The Washington case is parallel with the instant case, for the Agricultural Adjustment Act does not provide for cooperation. It leaves the matter of regulation of interstate commerce entirely to the investigation and determination of the Secretary of Agriculture. His failure to act does not justify action on the part of the State of California. The Agricultural Adjustment Act completely covers the field, as did the quarantine law in the Washington case.

In *Napier v. Atlantic Coast Line Railroad Company*, 272 U.S. 605, 47 S. Ct. 207, 71 L. Ed. 432, the question before the court was whether the Federal Locomotive Boiler Inspection Act of February 17, 1911, as amended,

“has occupied the field of regulating locomotive equipment used on a highway of interstate commerce, so as to preclude state legislation.”

The State of Georgia passed a law requiring “an automatic door to the fire box.”

The State of Wisconsin passed a law which prescribes a cab curtain for the cab.

The federal act provided, in Section 2:

“That it shall be unlawful for any carrier to use or permit to be used on its lines any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such carrier without unnecessary peril to life or limb, and unless said locomotive, its boiler, tender and all parts and appurtenances thereof have been inspected from time to time in accordance with the provisions of this act and are able to withstand such test or tests as may be prescribed in the rules and regulations hereinafter provided for.”

The court stated:

“Other sections confer upon inspectors and the commission power to prescribe requirements and establish rules to secure compliance with the provisions of Section 2. From time to time since the

passage of the original act, the commission has required that locomotives used in interstate commerce be equipped with various devices. But it has made no order requiring either a particular type of fire box door or a cab curtain. Nor has Congress legislated specifically in respect to either device."

The court further stated:

"Does the legislation of Congress manifest the intention to occupy the entire field of regulating locomotive equipment? Obviously it did not do so by the Safety Appliance Act, since its requirements are specific. It did not do so by the original Boiler Inspection Act, since its provisions were limited to the boiler. *Atlantic Coast Line R. Co. v. Georgia*, 234 U. S. 280, 58 L. ed. 1312, 34 Sup. Ct. Rep. 829. But the power delegated to the Commission by the Boiler Inspection Act as amended is a general one. It extends to the design, the construction and the material of every part of the locomotive and tender and of all the appurtenances.

"The question whether the Boiler Inspection Act confers upon the Interstate Commerce Commission power to specify the sort of equipment to be used on locomotives was left open in *Vandalia R. Co. v. Public Serv. Commission*, 242 U. S. 255, 61 L. ed. 276, P.U.R. 1917B, 1004, 37 Sup. Ct. Rep. 93. We think that power was conferred. The duty of the commission is not merely to inspect. It is, also, to prescribe the rules and regulations by which fitness for service shall be determined. Unless these rules and regulations are complied with, the engine is not 'in proper condition' for operation. Thus the commission sets the standard.

By setting the standard it imposes requirements. The power to require specific devices was exercised before the Amendment of 1915, and has been extensively exercised since."

"The federal and the state statutes are directed to the same subject—the equipment of locomotives. They operate upon the same object. It is suggested that the power delegated to the commission has been exerted only in respect to minor changes or additions. But this, if true, is not of legal significance. It is also urged that, even if the commission has power to prescribe an automatic fire box door and a cab curtain, it has not done so; and that it has made no other requirement inconsistent with the state legislation. This, also, if true, is without legal significance. The fact that the commission has not seen fit to exercise its authority to the full extent conferred, has no bearing upon the construction of the act delegating the power. We hold that state legislation is precluded, because the Boiler Inspection Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the commission leads to that conclusion. Because the standard set by the commission must prevail, requirements by the states are precluded, however commendable or however different their purpose. (Authorities omitted.)"

"If the protection now afforded by the Commission's rules is deemed inadequate, application for relief must be made to it. The Commission's power is ample. Obviously, the rules to be prescribed for this purpose need not be uniform throughout the United States; or at all seasons; or for all classes of service."

- a. **Agricultural Prorate Act.** (Calif. Statutes of 1933, page 1939, and amendments; Statutes of 1939, Chapters 363, 548, and 894.)

The federal act does not in any way authorize or empower the states to assume control of interstate commerce. In fact, it declares a policy to leave the control of the same to the considerate judgment and investigation of the Secretary of Agriculture. In considering our instant problem, we must bear in mind the fact that the entire raisin industry of the United States is located in a small section of the San Joaquin Valley in central California and that 90% to 95% of such raisins are ultimately sold and consumed in interstate commerce, so that any market plan or scheme for disposal of raisins or control of raisin pools must directly affect and burden and control interstate commerce in such raisins.

With the foregoing facts as a basis, let us analyze the purpose and scope of the Agricultural Prorate Act of California and the raisin program bottomed upon it. Section 2 of the Act consists entirely of definitions and distinctions. It defines in particular agricultural waste as ordinary waste as well as economic waste in delivery of farm products to market. It defines "handler", "dealer", and "processor" as persons having to do with the marketing of agricultural products. Sections 3, 4, and 5 of the Act create the Agricultural Prorate Advisory Commission and define its powers. In Section 8 it is provided:

"An agricultural prorated marketing program may be instituted for a variety or kind of agricultural commodity and may be based either upon a production zone or upon a market zone * * *"

Ten or more producers may file a petition for the establishment of a marketing program. The petition shall contain

- (a) a description of the district comprising the zone in which there is to be established the marketing program;
- (b) the facts showing the necessity of a proposed marketing program.

Section 9 provides for a hearing upon the petition.

In Section 10 it is provided in substance that if the commission shall find from the petition and the evidence

2. That the economic stability, etc. * * * is imperiled by prevailing market conditions;

3. That the institution of a program of prorate marketing will conserve the agricultural wealth in the State and will prevent threatened economic waste; and

6. * * * The commodity named in the petition cannot be marketed at a reasonable profit otherwise than by means of such a program; and

7. That the proposed zone of proration includes all of the producing territory, etc. * * *;

then, and in that event, the commission shall make findings accordingly and grant or deny the petition.

After the hearing on the petition all producers are given notice that a program is proposed and the number of acres with which the producer is credited. Under Section 15 a program committee is elected by the growers. This program committee "shall formulate a proration marketing program which shall be

submitted to the commission". The commission shall approve or disapprove the program, or may modify it and approve it as modified. The commission must fix a date prior to which the program, in order to become effective, must be consented to by the producers. Under the terms of Section 16 the Director of Agriculture must submit the program to the producers for their approval or disapproval. If, on a canvass of the returns, it shall appear that 65% of the producers and the owners of 51% or more of the producing factors have assented in writing to the program, the Director shall declare the program instituted. It is also provided in said section that the zone shall constitute a separate public corporate entity, and that its affairs shall be managed by a program committee appointed as herein provided.

Section 18.1 provides that the marketing program to be made effective shall be so formulated as to rectify, as far as possible, adverse marketing conditions and to maintain market stability under the limitation of the act. The marketing program may be modified in certain particulars outlined in the section. Section 19 provides, under the authority of a marketing program, a program committee shall determine the method, manner and extent of proration, and the movement of prorated commodity from harvest into a primary channel of distribution. Section 19.1 provides that the committee for the purpose of minimizing the effect of surpluses or other adverse market conditions may be empowered in any program

(a) to establish and maintain either surplus or stabilization pools. The committee shall designate the

quantity that shall be placed in the respective pools and the committee shall have title to the property in the pools.

1. The surplus pools cannot be marketed in competition with the stabilization pool, but may be turned over by the committee to charitable organizations, etc.

2. The stabilization pool may be marketed at such time as the program committee deems advisable.

Section 20 provides for the issuance of primary and secondary certificates evidencing the producers' compliance with the orders of the program committee. Heavy penalties are imposed by Sections 22.5, Section 24, and Section 25 of the Act.

The Act deals almost entirely with marketing. The purpose of the Act is to control the marketing of agricultural products. It not only controls the producer's sale and disposition of his crop, but it subjects the handler, distributor, and processor to the domination and control of the program committee with respect to the purchase and sale of products.

To make doubly sure that the Agricultural Prorate Act deals with marketing, we finally quote from the preamble to the Act, in Section 1 thereof, as follows:

"An act to conserve the agricultural wealth of the State of California, and to prevent economic waste in the marketing of agricultural products or crops produced in the State of California,
 • • •"

b. Raisin prorate program.

The Agricultural Prorate Act, as implemented by the raisin program, becomes a direct impediment to interstate commerce. We repeat, the program, as amended and in effect for the season of 1940, provides that a producer must deliver to the Zone all his inferior raisins (see definition page 34), and all of his substandard raisins (R. 34), without compensation. (R. 19, paragraph 13 (d).) The program committee, however, on any sale of the goods for by-product purposes, shall distribute any net proceeds among the producers. Sub-standard raisins are usable and desirable for human consumption. (R. 34; paragraph VIII, R. 57.) After delivery of the sub-standard and inferior raisins, the producer must then deliver 20% of the balance of his raisins into a surplus pool, for an advance of \$27.50 per ton. (R. 18.) Next he must deliver 50% of the balance into a stabilization pool, for an advance of \$55.00 per ton, to be disposed of at such time and in such amounts and to such buyers and at such prices as the defendants might determine. (The program, however, which was actually put into effect forbade the sale of stabilization raisins (Plaintiff's Exhibit 7, R. 75) until after January 1, 1941, which date was a considerable time after the 1940 crop would, if unrestricted, go into the normal channels of interstate commerce. (R. 107.)) The remaining 30% of his raisins may be disposed of by the producer, if he has complied with the foregoing conditions and has paid an additional \$2.50 per ton upon his 30% to the Zone. As the stabilization pool raisins can only be disposed of through normal marketing

channels, the Program defines normal marketing channels as follows:

"Those merchandising channels through which handlers customarily dispose of raisins for human consumption as raisins." (R. 35.)

The program limits the persons who can buy standard or surplus pool raisins or with whom it will deal. This rule excludes persons like appellee who do not conform to the Program. (Pl. Ex. 7, R. 75.)

To deprive one of the right to sell sound wholesome articles of commerce for interstate shipment, or to deny one the right to buy such articles for interstate shipment, is a definite and direct interference with interstate commerce.

The policy manifested in the Agricultural Adjustment Act is to place under the control of the Secretary of Agriculture the entire question as to when and to what extent there shall be any regulation of the buying and selling of agricultural products for interstate traffic; when sound and wholesome articles of interstate commerce shall have access to the normal channels of interstate trade. When Congress has made such a specific declaration of policy, it seems there is necessarily implied a prohibition of state action on such matters.

Cloverleaf Butter Co. v. Patterson, 62 S. Ct. 491, 315 U. S. 148;

Napier v. Atlantic Coast Line Railroad Co., supra;

Oregon-Washington Railroad & Navigation Co. v. State of Washington, supra.

The opinions in the *Cloverleaf Butter Co.* case, *supra*, contain a full discussion of the authorities.

Congress, by its definition of "commerce" in the Agricultural Adjustment Act, specifically empowers the Secretary of Agriculture to govern and control such intra-state matters as shall directly burden or affect such commerce. Normally, ordinary buying and selling of products is a local matter, but when it is a part of the current of interstate commerce, it is in a field beyond the scope of legitimate state action. The raisin industry depends absolutely upon interstate traffic for its existence. To interfere with, limit or embargo transactions which are necessarily a part of that current traffic is a serious interference with interstate commerce.

The federal and state acts are wholly inconsistent, because each act assumes control of the entire traffic in raisins. They cannot operate together. The superior federal statute must prevail, and the state act must give way.

Such result would follow under the ordinary interpretation of the interstate commerce clause. However, where Congress has made such a specific declaration of policy with respect to the matter and placed the enforcement of that policy within the hands of the Secretary of Agriculture, there seems to be no room left for doubt or quibble. The raisin program is a thinly disguised scheme to obstruct and control the entire interstate traffic in raisins. Such subterfuges are specifically prohibited by the Agricultural Adjust-

ment Act. (See definition of "commerce" in Act, Section 610 (j).)

The mere fact that a program has not been put into effect by the U. S. Secretary of Agriculture does not detract from the force of the policy adopted by Congress. The mere fact that goods must be stopped after purchase or delayed in transportation for processing purposes does not affect the transaction as one within the protection of the commerce clause or the Agricultural Adjustment Act. (See same definition.) Where a packer purchases raisins to fill interstate orders, the preparation or processing of the raisins is but an incident in the interstate traffic and does not detract from the transaction as one in interstate commerce.

In *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, 62 S. Ct. 384, the appellant was engaged in buying and receiving gas from the lines of Panhandle Eastern Pipe Line Company (which owned and transmitted gas from the fields in Texas and other states into and through Illinois and Indiana); Appellant, in turn, sold the gas to various local distributors and some industrial plants. All of appellant's business was transacted in the State of Illinois, where it received the gas from the Panhandle Company, of which company appellant was an operating auxiliary. The Illinois Commerce Commission had on petition of appellee, a local distributor of natural gas, ordered appellant to make connections with appellee's distributing system and to supply appellee with gas for its customers.

The gas which appellant handled came from the fields in Texas and elsewhere, under pressure furnished by Panhandle Company. Appellant received its gas from the pipe lines of the company, then reduced the pressure in its own lines to meet the needs of those to whom it sells. Its customers, in turn, reduce the pressure according to the needs of their customers.

The Illinois Commerce Commission held appellant's business to be wholly intrastate, and the Supreme Court of Illinois upheld that ruling, stating that appellant's business became intrastate as soon as it reduced the pressure in its pipes and resold the gas. The Supreme Court, in deciding the case, said that it was not important in determining the character of the commerce to know at what point in the movement of the gas the title to the same passed to appellant. The Supreme Court had previously held that where a gas company, receiving gas through interstate sources, reduced the pressure and sold direct to the customers, the resale or such sale was an intrastate action subject to state regulation. However, the court has held that the resale to local distributors is not intrastate commerce.

The importance of the case to the local issue is that Congress had passed the Natural Gas Act of June 21, 1938, vesting in the Interstate Commerce Commission power to regulate the wholesale distribution to public service companies of natural gas moving in interstate commerce. By such regulation Congress "undertook to regulate a defined class of natural gas distribution

without the necessity, where Congress has not acted, of drawing the precise line between state and federal power by the litigation of particular cases." The extension of facilities of such an interstate dealer in gas could be made only after getting a certificate of public convenience from the Interstate Commerce Commission.

In deciding the case the Supreme Court said:

"In determining the scope of the federal power over the proposed extension of facilities and sale of gas it is unnecessary to scrutinize with meticulous care the physical characteristics of appellant's business, in order to ascertain whether, as the court below held, the interstate commerce involved in bringing the gas into the state ends before delivery to distributors. In any case the proposed extension of appellant's facilities is so intimately associated with the commerce and would so affect its volume moving into the state and distribution among the states as to be within the Congressional power to regulate those matters which materially affect interstate commerce, as well as the commerce itself. (Cases cited.)

"As Congress, by section 7(a) (c) of the Act has given plenary authority to the Federal Commission to regulate extensions of gas transportation facilities and their physical connection with those of distributors, as well as the sale of gas to them, and since no certificate of public convenience and necessity, required by section 7(c), has been granted to appellant by the Federal Commission for the proposed extensions and sale, the state commission was without power to order them."

While there is a difference between the powers vested in the Secretary of Agriculture under the Agricultural Adjustment Act and the powers vested in the Interstate Commerce Commission under the Natural Gas Act, yet in each act there is vested in a government official or commission the power to act, with duty to act, with respect to a certain matter, and the principle of appropriation of field of legislation should apply equally in the two instances. Let us illustrate: Congress has vested the power in the Secretary of Agriculture with the duty to act and regulate interstate commerce and local transactions affecting interstate commerce with respect to agriculture, in all cases where economic conditions require such action. If economic conditions require action on the part of the state, it would naturally require action on the part of the Federal Secretary of Agriculture. As his duty and power cover the same field, it naturally excludes action by state authority, as in the gas company case, state action was excluded by reason of the power vested in the Interstate Commerce Commission.

We reiterate that the mere fact that the Secretary of Agriculture has not acted does not increase or enlarge the powers of the state, neither does it lessen the declaration of policy or the scope or field of action bestowed upon the Secretary of Agriculture for the control of interstate commerce in agricultural products.

DUE PROCESS—UNDER THE FOURTEENTH AMENDMENT.

Appellee, in addition to his business as a packer, produced 200 tons of raisins in the year 1940. (R. 76.) By Section 19.1 of the Agricultural Prorate Act title to 70% of these raisins was taken from appellee (unless appellee had no desire to commercially dispose of them). There was no right of appeal or protest against such vesting of title. The act gave to appellee in exchange for title to his raisins an equitable interest in the proceeds of the sale thereof. (Section 19.1.) By virtue of the seasonal program adopted for the year 1940, the producer was entitled to an advance of \$55.00 on the raisins delivered to the 50% stabilization pool and an advance of \$27.50 on the raisins delivered to the 20% surplus pool (R. 18), but there is no provision in the act or in the Marketing Program For Raisins As Amended (quoted in the printed Statement As to Jurisdiction) authorizing an advance, and therefore the next seasonal program may conceivably provide for no such advance. Even the 1940 program returns to the producer nothing for his sub-standard raisins (these being good for human consumption, R. 34, Note 7) and his inferior raisins, excepting an equitable interest in the proceeds of the sale for by-product purposes of such raisins made by the Program Committee. (R. 19.) Appellee testified incidentally that he received nothing for his raisins delivered to the 1938 surplus pool (R. 94) so it is problematical whether he would receive anything for his 1940 sub-standard or inferior raisins, or anything more than the original advances made on the raisins delivered to the 1940 stabilization and surplus pools.

Thus, title to the bulk of appellee's raisins would have been vested by legislative fiat in the prorate zone and appellee would have lost all right to determine to whom the raisins should be sold, the price, the time of sale, and the conditions of payment. The producer was required to surrender title to his raisins in exchange for a future equitable interest in the proceeds of the sale by the Program Committee of all the raisins in the pools.

For each violation of the act appellee, as both a producer and handler of raisins, would have been subjected to heavy civil and criminal penalties. (Sections 22.5 and 25 of the Act.) These penalties are so severe as to bring into application the principles announced in *Ex parte Young*, 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714.

CAPPER-VOLSTEAD ACT. (U.S.C.A., Title 7, Sections 291-292.)

At the oral argument appellants suggested that the Zone was a cooperative and not restrained by the commerce clause or the Sherman Anti-Trust Law but enjoyed a special immunity.

The Capper-Volstead Act relates solely to persons engaged in the production of agricultural products who voluntarily form cooperative organizations to further their own transactions in interstate commerce. It does not embrace or authorize state control of manipulated organizations where membership may be or is compulsory. Neither does it permit combinations of producers and nonproducers.

U. S. v. Borden Co., 308 U. S. 188, 60 S. Ct. 182;

U. S. v. Elm Spring Farm (D. Ct. Mass., 1941),
38 F. Supp. 508.

Needless to say, that which is compulsory is not cooperative. The word "cooperative" means voluntary association.

SUMMARY.

The pleadings, as a whole, show acts on the part of defendants in setting up and enforcing the raisin program under the Agricultural Prorate Act, constituting both a combination in restraint of trade and a combination monopolizing the shipment, and price, of raisins in interstate commerce. The act authorizing the establishment and enforcement of such a program is unconstitutional and cannot give immunity to defendants for their wrongful conduct.

The Agricultural Adjustment Act manifests and declares a definite and clear policy, on the part of Congress, to assume control of all acts which are deemed reasonably necessary to stabilize and assure sound economic conditions in agricultural products which find their market outlets in interstate and foreign commerce. Congress has definitely appropriated that field of action to itself and ordered the Secretary of Agriculture to act whenever he finds economic conditions require or make reasonably necessary such control. The appropriation of control, by Congress, by its own force, deprives the state of power to act. Hence, state legislation which attempts to assume such control is in conflict with the superior legislation of Congress and must give way.

The Agricultural Prorate Act deprives one of the title to his property without due process of law, for it deprives him of his property by legislative fiat, and without giving him a hearing in court. The act makes the refusal to submit to such arbitrary action so hazardous as to civil and criminal penalties that he is virtually deprived of any chance to contest the seizure of his property. Defendants are already demanding \$13,000.00 in civil penalties from Brown. (R. 30.) That is enough to bankrupt the ordinary small packer. The criminal penalties could even yet be enforced.

In filing this additional brief, appellee submits that the authorities cited in his original brief amply justify affirmance of the judgment under a general application of the provisions of the commerce clause. These additional points are presented only to show that the acts of the defendants are violative of the special acts of Congress cited and the due process clause of the Fourteenth Amendment.

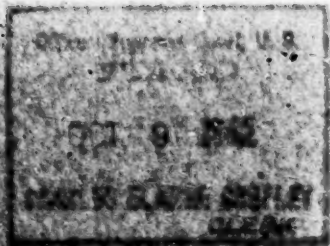
Dated, Fresno, California,
September 28, 1942.

Respectfully submitted,

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FILE COPY



No. 42

In the Supreme Court of the United States

October Term, 1942

**W. B. PARKER, DIRECTOR OF AGRICULTURE, AGRICULTURAL PESTICIDE ADVISORY COMMISSION,
RANCH PESTICIDE BOARD No. 1, ET AL., APPEL-
LANTS**

FORSTER L. BROWN

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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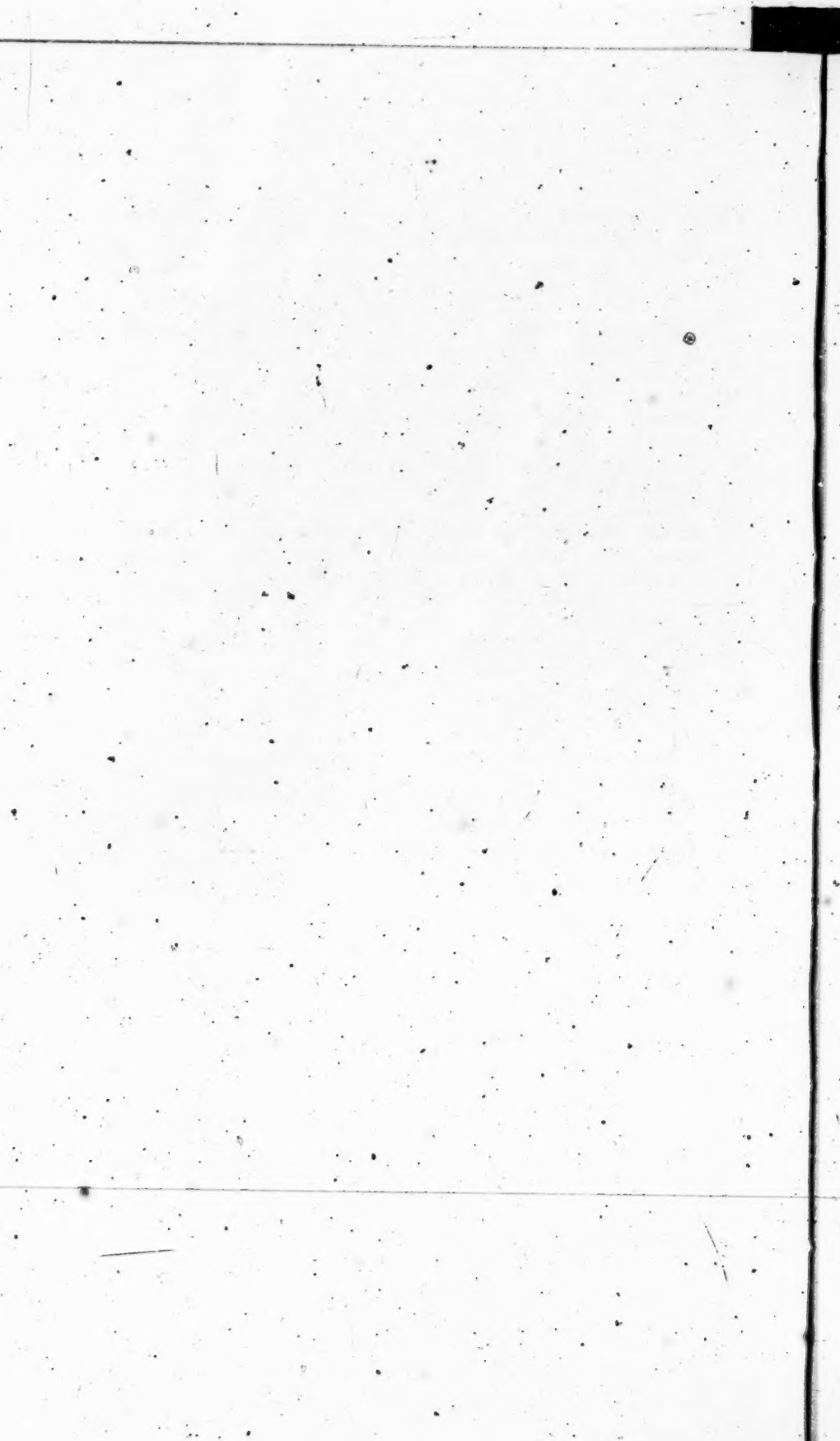
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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 46

W. B. PARKER, DIRECTOR OF AGRICULTURE, AGRICULTURAL PRORATE ADVISORY COMMISSION, RAISIN PRORATION ZONE NO. 1, ET AL., APPELLANTS

v.

PORTER L. BROWN

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the district court (R. 30) is reported in 39 F. Supp. 895.

JURISDICTION

The judgment of the district court was entered on December 4, 1941 (R. 61). Petition for appeal was filed on December 26, 1941, and was allowed on the same day (R. 63, 65).

The jurisdiction of this Court is conferred by Section 266 of the Judicial Code as amended, 28 U. S. C., sec. 380, and Section 238 of the Judicial Code as amended, 28 U. S. C., sec. 345. Probable jurisdiction was noted on April 6, 1942.

QUESTIONS PRESENTED

The questions which are considered in this brief are:

(1) Whether the marketing program for raisins involved in this proceeding is rendered invalid by federal agricultural legislation;

(2) Whether the program is rendered invalid by the Sherman Act;

(3) Whether the program is invalid under the commerce clause apart from any federal statute.

STATUTES INVOLVED

The statutes involved are the California Agricultural Prorate Act, as amended, the Federal Agricultural Marketing Agreement Act of 1937, and the Sherman Act. Annotated compilations of the first two statutes are attached hereto as appendices to this brief, *infra*.

STATEMENT

Appellee, a producer and packer of raisins in the State of California, instituted this proceeding to restrain the enforcement as against him of a program, put into effect under the authority of the California Agricultural Prorate Act as amended,

to control the marketing of the 1940 crop of raisins produced in Raisin Proration Zone No. 1 (referred to herein as the Zone). Appellants are certain officials and organizations charged with administration of this marketing program.¹

In the district court the parties stipulated certain facts, and oral testimony and certain exhibits were also introduced. A three-judge district court, with one judge dissenting, held that the raisin marketing program directly interfered with and burdened interstate commerce and was therefore invalid under the commerce clause of the Constitution. The court entered appropriate findings of fact and conclusions of law (R. 51-60) and permanently enjoined appellants from enforcing the program against appellee (R. 61).² This Court, after argument on appeal at the 1941 Term, restored the case to the docket for reargument and requested the parties to discuss the questions whether the State statute as applied in this case is rendered invalid by the action of Congress in passing the Sherman Act, the Agricultural Adjustment Act as amended, or any other act of Congress. The order restoring the case to the docket requested the Solicitor General to file a brief as *amicus curiae*.

¹ Appellants are the Director of Agriculture of the State of California, the Agricultural Prorate Advisory Commission of that State and its members, and the Proration Program Committee of Zone No. 1 and certain of its members.

² The injunction did not extend to unwholesome, unsound, or inferior raisins (R. 62).

The commercial production of raisins in the United States is confined to California,³ and practically all of the raisin production of that State is within the Zone.⁴ Ninety to ninety-five percent of the raisins produced therein which are marketed and consumed as raisins for human consumption are shipped to points outside the State of California (R. 16). Since imports are negligible,⁵ it follows that any control exercised over the supply of Zone raisins permitted to enter commercial channels and over prices to be paid producers directly affects and controls the supply of raisins, and their price, throughout the entire country.

The producer of raisins picks bunches of grapes and spreads them for drying on trays laid between the rows of vines, turns the grapes from time to time so that all sides are exposed to the sun, and when the grapes have properly dried, places them in "sweat" boxes. The grapes thus cured into raisins are sold and delivered in the

³ United States Tariff Commission, *Grapes, Raisins & Wines* (Rep. No. 134, 2d series), p. 142.

⁴ See appellants' brief filed in this Court at the 1941 Term (No. 1040), p. 3.

⁵ For the 1937-1938 season, the latest period for which figures are given, the United States production of raisins available for domestic consumption was 139,000 tons, exports were 71,000 tons, and imports 200 tons. *Grapes, Raisins & Wines*, *supra*, p. 141. Imports, therefore, represented less than $\frac{1}{10}$ of 1% of the total available domestic supply.

sweat boxes to packers, whose plants are all located in the Zone (R. 15, 57).

To prepare the raisins for commercial sale, the packers, of whom there are about 40, clean and stem the raisins, sort them as to size, and put them in containers (R. 16, 104-106, 126-128). One variety is also seeded (R. 109, 113). Except for packaging, such "processing" is all done by machinery and takes from eight to ten minutes in the largest plant and from one to six minutes in the plants of the smaller packers (R. 107, 130-131). Raisins which are marketed in clusters, unstemmed, and which are known as Muscat layers, may not require even this simple preparation for market. If they have been properly cured in the field, the entire process consists of lifting the raisins from the sweat boxes and placing them in larger containers (R. 85, 129-130). Sometimes they are steamed so as to make the stems more pliable for packing (R. 130), and the largest packer always does this (R. 113-114).

The packers sell their raisins through agents, brokers, jobbers, and other middlemen located throughout the country (R. 16, 116, 129, 154-155). Until he is ready to ship to a purchaser, the packer keeps his raisins in the form in which they have been received because they keep better in this form than after they have been packed (R. 16, 108, 121, 127). Packaging is therefore an incident to, and immediately precedes, shipment (R. 133).

The length of time the raisins remain at the packing plants before shipment varies from a few days up to two years, depending upon the packer's current supply of raisins and the market demand (R. 16, 107-108). The small packer, who cannot afford to finance storage of stock throughout the entire period between one crop season and the next, frequently exhausts his storage stock by the end of April (R. 132-133). When he then accepts orders calling for fall delivery and at the same time makes forward contracts for the purchase of raisins from producers, part of the raisins which he receives during the delivery season* are immediately shipped out in fulfillment of outstanding purchase orders and the rest are stored (R. 128-129, 131-132). While during recent years there has always been a substantial carry-over of raisins at the end of each crop season, this carry-over is generally in the hands of the larger packers able to finance it (R. 17, 132-133). About 75% of the entire crop is ordinarily handled by the five largest packers (R. 119).

The state seasonal marketing program for raisins for the 1940-1941 season was adopted and became effective September 7, 1940 (R. 18). The main or basic program, which is entitled "Market-

*A large percentage of the raisins produced in the Zone is delivered to packers within 90 days after the start of the delivery season, which begins between September 15 and September 30 (R. 17).

ing Program for Raisins, as Amended," had become effective on July 23, 1940. Both are administered by a Proration Program Committee appointed by the Director of Agriculture of the State of California from nominees elected by producers in the Zone (Program, Art. II, Secs. 2, 5; Act, Sec. 15*). The acts of the Committee, however, are subject to the approval of the Director of Agriculture (Act, Sec. 22).

The major provisions of the program, as implemented by the seasonal marketing program for 1940,* are:

The Committee shall fix a standard grade for raisins (Art. X, Sec. 4). Edible raisins which meet this standard are designated "standard raisins"; those which fall below it are designated "substandard raisins"; and raisins which are unfit for human consumption are designated "inferior raisins" (Art. I, Sec. 1 (n), (o), (p)).

* This "program" is printed in pamphlet form in appellants' jurisdictional statement, pp. 7-37, and, by stipulation of the parties (R. 167), it was not reprinted in the record on appeal. Subsequent references herein by article and section refer to this pamphlet.

* The reference is to the California Agricultural Prorate Act, attached hereto as Appendix B.

* The "Marketing Program" does not itself prescribe the percentages of raisins to be delivered to the various pools or the prices. Those are to be determined by the "seasonal marketing programs" provided for in Article III of the main program. The essential features of the 1940 seasonal marketing program are described at R. 18-19.

The Committee shall establish receiving stations to which every producer must deliver all raisins which he desires to market (Art. X, Sec. 1). The raisins are graded at these stations and the Committee retains those which, under the provisions of the program, are to go into the inferior, surplus, and stabilization pools. All inferior raisins must be placed in the inferior raisin pool (Art. IV, Sec. 1). All substandard raisins must be placed in the surplus pool (Art. V, Sec. 1). Of the standard raisins, 20% must be placed in the surplus pool and 50% in the stabilization pool (R. 18). The producer is permitted to sell the remaining 30% of his standard raisins, called "free tonnage", through ordinary commercial channels, subject to the requirement that he obtain a secondary certificate authorizing such marketing and pay the certificate fee of \$2.50 for each ton covered by the certificate (R. 19).¹⁰

Raisins in the inferior raisin pool and in the surplus pool are to be disposed of "only for assured by-product and other diversion purposes" (Art. IV, Sec. 4; Art. V, Sec. 4). Raisins in the stabilization pool are to be disposed of "in such manner as to maintain stability in the markets and to dispose of such raisins," but no raisins

¹⁰ The program provides that a secondary certificate shall accompany all deliveries of free tonnage into ordinary commercial channels and that secondary certificates shall be issued "to control the time and volume of movement" of free tonnage into commercial channels (Art. XI, Sec. 1 (b)).

(apart from those subject to special lending or pooling arrangements with the Federal Government) shall be sold at less than "the prevailing market price" for raisins of the same variety and grade on date of sale (Art. VI, Sec. 4).

The Committee may pledge raisins in the surplus and stabilization pools in order to secure funds to finance pool operations and to make advances to growers (Art. V, Sec. 3; Art. VI, Sec. 3). Appellants negotiated an agreement with the Commodity Credit Corporation under which that Corporation, as provided in the agreement, furnished funds to make advances to producers on account of raisins delivered into the surplus and stabilization pools (R. 19). The agreed amount of these advances, paid at time of delivery, was \$27.50 or \$25 a ton (depending upon the variety of the raisins) for deliveries into the surplus pool and \$55 or \$50 a ton for deliveries into the stabilization pool (R. 18, 19).

The Committee is required to keep separate accounts for each of the three pools established by the program and, upon liquidation of the raisins in any pool, each producer is to receive his *pro rata* share of the net proceeds of the pool (Art. IV, Sec. 5; Art. V, Sec. 5; Art. VI, Sec. 5).

There was a seasonal proration program for raisins under the California law for the 1938-1939 season, but none for the 1939-1940 season (R. 20). In the summer of 1940, before it was announced

that a proration program would be put into effect for the 1940-1941 season, the sweat-box price of raisins was \$45 a ton; after August 30, 1940, the date of the announcement that a proration program would be adopted, the price became \$47 or \$48 per ton; after September 7, 1940, the date that the program was adopted, the price became \$55 a ton or higher (R. 76-77, 89, 91-92).

SUMMARY OF ARGUMENT

I

The Agricultural Marketing Agreement Act authorizes the Secretary of Agriculture to establish the same type of regulation as the California Raisin Program. When a federal marketing order is issued, a state program would clearly be superseded. The question whether a state program can stand in the absence of a federal order depends upon the intention of Congress. Where there is no express manifestation of such intention, it is necessary to determine whether the state law stands as an obstacle to the accomplishment of the purposes of the federal statute.

The federal act imposes upon the Secretary of Agriculture a mandatory duty to institute proceedings leading to the issuance of a marketing order if he has reason to believe that such an order will tend to effectuate the statutory policy of maintaining farm prices at the parity level. The object of the state law is to establish marketing programs

whenever surpluses affect market "stability," without any relationship to parity. The federal act is more concerned than the state with the interests of consumers, since it provides that its machinery shall not be used to maintain prices above the parity level. Inasmuch as a state program maintaining prices above parity would be contrary to the policy of the federal act, and since the Secretary is to issue a federal order whenever such a program would tend to effectuate the parity policy, there is little room left in which Congress could have intended a state program to be operative. Furthermore, the requirement that no federal order can go into effect without the approval of two-thirds of the producers will not function in the manner contemplated by Congress if a state program is also in the picture, since in that case the federal order will have to compete with and outbid the state before it can become effective.

In our view a state program such as this normally will tend to interfere with the effective operation of the federal statute in the manner intended by Congress. In the present case, however, the loan agreement between Commodity Credit Corporation and the State Program Committee shows that this particular state program was regarded by the Department of Agriculture as entirely consistent with the policy of the federal statute. The manifestation of approval of the state program by the very persons charged with the administration

of federal agricultural marketing policy is sufficient, in our opinion, to show that the program here involved was not inconsistent with federal agricultural legislation.

II

The Sherman Act prohibits monopolies of interstate trade and restraints which take the form of eliminating price competition. The state program is inconsistent with both of these prohibitions. Congress did not intend that the policy embodied in the Sherman Act should be overridden by state legislation. Although the states are not precluded from enforcing normal "police" regulations which interfere to some extent with interstate trade, they may not monopolize the supply or control the price of a commodity distributed throughout the nation. The approval given the state program in the Commodity Credit Loan Agreement did not immunize it from the Sherman Act. The general power granted Commodity Credit to fix the terms and conditions of loans on agricultural commodities did not empower it to grant exemptions from the antitrust laws.

III

In the absence of any manifestation of congressional intention the commerce clause itself prohibits states from regulating those subjects which "are in their nature national" (*Cooley v. Board of Port Wardens*, 12 How. 299), although they may

regulate even interstate activities which are primarily of local concern. *South Carolina Highway Department v. Barnwell Bros.*, 303 U. S. 177; *California v. Thompson*, 313 U. S. 109. An important consideration is whether the burden of a state law falls primarily upon persons outside of the regulatory state. *South Carolina Highway Department v. Barnwell Bros.*, *supra*.

The California statute and raisin program permit a state agency to monopolize the entire national supply of raisins, to determine the quantity to be shipped in interstate commerce, and to control the interstate price structure. We believe that, if anything is of national commercial significance, the supply and price level of a commodity moving in interstate commerce fall within that category. Furthermore, inasmuch as 90 to 95 percent of the raisins covered by the program are sold interstate, the burden of the regulation will fall primarily upon consumers in other states. Since the benefits accrue to the California producers, the action of the state "is not likely to be subjected" to the normal "political restraints" upon legislation whose impact is felt equally by interests within the state. Accordingly, we believe that the California raisin program is unconstitutional.

ARGUMENT

Introduction.—This case involves the California Raisin Program for 1940-41. No question is presented as to the relationship of the state act and

program to the Emergency Price Control Act of 1942 or other federal wartime measures designed to keep markets and prices under control. We shall therefore treat the case as involving only pre-war federal legislation, and shall assume that all questions as to the relation of the state law to the federal war program may be reserved until such time as they may arise.

The Court has requested a discussion of the validity of the state statute and program in the light of federal agricultural legislation and the Sherman Act. The two points are related, since the statutes must be read together. For purposes of convenience, however, we have considered the agricultural legislation entirely separate and apart from the Sherman Act in Point I, and have taken up the relationship between the statutes in the treatment of the Sherman Act in Point II. In Point III we consider the constitutionality of the state program under the commerce clause itself apart from congressional legislation. Although the Court has not requested reargument of that question, we think it may be determinative of the case and accordingly have gone into it quite fully.

I

THE RELATIONSHIP BETWEEN THE CALIFORNIA RAISIN PROGRAM AND FEDERAL AGRICULTURAL LEGISLATION

Background. — The Agricultural Adjustment Act, enacted on May 12, 1933 (48 Stat. 31), twenty-

four days before the California Agricultural Pro-rate Act (Cal. Stats. 1933, c. 754), authorized the Secretary of Agriculture to enter into marketing agreements (Sec. 8 (2)) with and to issue licenses (Sec. 8 (3)) to persons engaged in the handling of agricultural products in the current of interstate or foreign commerce in order to effectuate the declared policy of the Act—the attainment of “parity prices”¹¹—and to restore normal marketing conditions.

On May 29, 1934, the Secretary of Agriculture executed a marketing agreement, and on May 31 issued a substantially identical license covering the California raisin industry.¹² The license provided for the establishment of minimum prices for raisins and for the diversion of a percentage of the crop from the market for use as by-products. Fifteen percent of the 1934 crop was diverted from the market under this program, which resulted in increased returns for growers during that year.¹³

The difficulty experienced by the Department, particularly after the decisions of this Court in

¹¹ Parity is a shorthand term used to describe a price which will accord farmers a purchasing power with respect to articles they buy equivalent to the purchasing power of prices in the base period, 1909-14. See *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, 574-575.

¹² United States Department of Agriculture, Agricultural Adjustment Administration, *Marketing Agreement and License for Packers of California Raisins* (Agreement No. 44, License No. 59).

¹³ See United States Tariff Commission, *Grapes, Raisins, and Wines* (Report No. 134, 2d Series), pp. 157, 65.

Panama Refining Co. v. Ryan, 293 U. S. 388, on January 7, 1935, and *Schechter Poultry Corp. v. United States*, 295 U. S. 495, on May 27, 1935, in enforcing this program against the minority of packers unwilling to comply, led to considerable dissatisfaction on the part of those who were complying and to the termination of the program by the Secretary on September 13, 1935.

On August 24, 1935, the Agricultural Adjustment Act was amended. A new Section 8c, replacing Section 8 (3), authorized the Secretary to issue marketing orders instead of licenses (49 Stat. 753). The amendment contained a more restricted delegation of power to the Secretary¹⁴ and was limited to transactions subject to the federal commerce power.¹⁵ The provisions of the Agricultural Adjustment Act pertaining to marketing orders were reenacted, with minor modifications, in the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U. S. C. Sec. 608c).

The raisin crop for 1936 was small, but a large crop in 1937 caused the price to decline by the end of that year and resulted in an appeal for federal assistance.¹⁶ The Commodity Credit Corporation agreed to support the growers with a loan not to exceed two and a half million dollars

¹⁴ *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, 574.

¹⁵ *United State v. Wrightwood Dairy Co.*, 315 U. S. 110.

¹⁶ See United States Tariff Commission, *Grapes, Raisins, and Wines* (Report No. 134, 2d Series), pp. 157, 65.

and eventually took approximately thirty thousand tons of raisins off the market by selling them to the Federal Surplus Commodity Corporation.¹⁷

The California raisin proration program was originally adopted in 1937 and amended on July 23, 1940. As supplemented by the Seasonal Marketing Program for 1938-39, it provided for the delivery by each grower of twenty percent of his 1938 product to a surplus pool, where it would be held until it could be marketed without competing with the free tonnage (R. 21).¹⁸ The state officials were aware of their inability to maintain a proration plan unless they were in a position to advance money to the growers when the crop became available for market. The only place from which such funds could be borrowed was the Commodity Credit Corporation, which was not then in the Department of Agriculture but which was created for the purpose of lending money on agricultural products.¹⁹ In so far as marketing programs were concerned the Corporation was guided by the advice of officials of the Department of Agriculture who also administered the Agricultural Marketing Agreement Act and the surplus commodities program. These officials approved the provisions of the state program, and agreed to recommend to Commodity Credit that the loans

¹⁷ *Id.*, at pp. 157-158, 66.

¹⁸ *Ibid.*

¹⁹ Agricultural Adjustment Act, sec. 302, 52 Stat. 43, 7 U. S. C., sec. 1302. See p. 46, *infra*.

be made. Once financing was assured, a state program in the form approved by the Department of Agriculture was put into operation.²⁰

In 1939 there was again a large surplus, and the state again requested federal financial assistance. The Department of Agriculture determined to purchase a substantial portion of the surplus for relief purposes but refused to finance a state marketing program,²¹ and for that reason, among others, no seasonal program was adopted for that year (R. 20).

The state again requested support for a program for 1940. A state committee headed by the State Director of Agriculture came to Washington to see if a seasonal plan satisfactory to the Department of Agriculture (which by that time included the Commodity Credit Corporation) could be devised. The details of the plan finally adopted, described *supra* pp. 7-9, were worked out by this committee and the staff of the Surplus Marketing Administration. Upon the advice of the Administrator of the Surplus Marketing Administration, Commodity Credit agreed to advance the necessary funds.²²

The state seasonal program became effective on September 7, 1940 (R. 18). The loan agreement with Commodity Credit was executed October 11,

²⁰ These facts are based upon information obtained from the Department of Agriculture.

²¹ *Ibid.*

²² *Ibid.* See also R. 19.

1940. The contract between Commodity Credit and the state zone contained two important features. The loan was conditioned on the zone requiring all growers to deliver their raisins to surplus and stabilization pools in the proportions specified in the approved program.²² The Zone further agreed that ²³ it—

shall dispose of pledged raisins in accordance with such policies as may be approved by a committee to be designated for that purpose by the Secretary of Agriculture of the United States.

Unless such committee otherwise indicated, pledged raisins in the stabilization pool were to be sold whenever a price equal to the amount of the loan, plus interest, plus seventy-five cents per ton to cover shrinkage could be obtained.²⁴ As required by law (see p. 47, *infra*), this agreement was

²² Section 3 of the agreement between the State Zone and Committee and Commodity Credit provided that—"The Zone agrees that it will require all producers of raisins to deliver to the Surplus Pool, in sweat boxes or picking boxes, twenty percent (20%) of their 1940 production of raisins of each of the varieties named in this paragraph of standard quality or better and to the Stabilization Pool, in sweat boxes or picking boxes, fifty percent (50%) of their 1940 production of raisins of each of the varieties named in this paragraph of standard quality or better, and that not less than twenty-eight percent (28%) of the raisins tendered to Commodity for a loan hereunder shall be from the Surplus Pool."

²⁴ Section 8.

²³ *Ibid.*

approved by the Secretary of Agriculture and the President.

The Secretary of Agriculture appointed as the committee to approve the policies of the State Zone the Administrator of the Surplus Marketing Administration, the Assistant Administrator, and the Chief of the Fruit and Vegetable Division. This committee, known as the Sales Policy Committee, notified the Zone as to the prices at which pledged raisins must be sold. The prices established were minimum prices, but they were also, in effect, maximum prices, since the Zone was required to accept any offers made at the prices specified. The Committee fixed as the price the amount of the loan plus five dollars per ton to cover costs to Commodity Credit. An object of requiring offers to be accepted at that price was to prevent the Zone from holding the pledged raisins for such high prices as might prevent their sale.²⁶ The State Zone established the prices approved by the federal committee. Subsequently, it sought to have these prices increased. The Committee declined to approve such an increase, but suggested that a greater return to the farmer could be secured by transferring raisins from the surplus to the stabilization pool. The Zone followed this suggestion, and all of the raisins in the stabilization and surplus pools were sold.²⁷

²⁶ This provision was included in the agreement because of the difficulties the Department of Agriculture and Commodity Credit had had with another state program.

²⁷ See note 20, *supra*.

**A. THE AGRICULTURAL MARKETING AGREEMENT ACT
AUTHORIZED THE SECRETARY OF AGRICULTURE TO
ESTABLISH THE SAME TYPE OF REGULATION AS
THE STATE RAISIN PROGRAM**

The Agricultural Marketing Agreement Act²⁸ authorizes the Secretary of Agriculture to issue orders limiting the quantity of specified agricultural products, including fruits, which may be marketed in the current of, or so as directly to affect, interstate commerce. Such orders may allot the amounts which handlers may purchase from any producer by means which equalize the burden among producers, may provide for the control and elimination of surpluses, and for the establishment of reserve pools. Section 8c (6). These powers unquestionably would extend to the control of surpluses in the raisin industry through a pooling arrangement such as was promulgated by the State of California in the instant case.²⁹

The federal statute differs from the state in that its sanctions fall upon the handlers alone,

²⁸ An annotated compilation of the Act is attached to this brief as Appendix A.

²⁹ The validity of such a reserve pool program with respect to walnuts and hops has been sustained. *Wallace v. Hudson-Duncan & Co.*, 98 F. (2d) 985 (C. C. A. 9); *United States v. Hughes*, 28 F. Supp. 977 (E. D. Wash.); *United States v. Washington State Hop Producers*, decided September 22, 1939 (E. D. Wash. unreported). Although, in the walnut program, the reserve pool was maintained by handlers rather than growers, the original federal raisin program of 1934 and the hop marketing order of 1938 fixed the amount that handlers could purchase from growers.

while the state act applies both to handlers and growers. But the transactions regulated may be the same. Section 8a (6) (B) of the federal act provides for the equitable allotment among producers of the amount to be purchased by handlers. Section 8c (6) (D) provides for eliminating surpluses by equalizing the burdens among producers as well as handlers. The federal statute thus clearly contemplates that marketing orders may regulate sales by growers to handlers. Such sales are controlled whether the penalties for failure to comply with a program regulating them fall on the buyers alone or on both buyers and sellers.

We do not anticipate that it will be argued that Congress lacks constitutional power to impose a regulation similar to the state program here involved. The power of Congress to control the amount marketed interstate and the interstate price structure, through regulation of the sales preceding preparation and marketing in interstate commerce, cannot be doubted. *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, 568-569; *Curran v. Wallace*, 306 U. S. 1; cf. *United States v. Wrightwood Dairy Co.*, *supra*; *National Labor Relations Board v. Fainblatt*, 306 U. S. 601; *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148, 153-154.³⁰ The State has contended (Br.

³⁰ The question of federal power over intrastate transactions affecting the interstate supply and price structure is treated in the Government's brief filed in *Wickard v. Filburn*, No. 1080, 1941 Term, No. 59, this Term.

30-31) that its program, operating upon the movement of raisins from growers to packers in California, controls intrastate activities antecedent to interstate commerce, and for that reason cannot be said unduly to burden interstate commerce.³¹ But whether the sales are interstate or intrastate is immaterial, in so far as the exercise of federal power is concerned. For, as the State's brief (pp. 32-33) seems to recognize, the regulatory power of Congress extends behind the point at which interstate commerce begins. In dealing with an analogous problem in *Illinois Natural Gas Co. v. Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 509, this Court said:

In determining the scope of the federal power over the proposed extension of facilities and sale of gas, it is unnecessary to scrutinize with meticulous care the physical characteristics of appellant's business, in order to ascertain whether, as the court below held, the interstate commerce involved in bringing the gas into the state ends before delivery to distributors. In any case, the proposed extension of appellant's facilities is so intimately associated with the commerce, and would so affect its volume moving into the state and distribution among the states, as to be within the Congressional power to regulate

³¹ We do not believe that the sales by the growers to the packers are definitely outside of the interstate sphere. See pp. 83-85, *infra*.

*those matters which materially affect interstate commerce, as well as the commerce itself. * * * [Italics supplied.]*

For these reasons we think it clear that under the Agricultural Marketing Agreement Act the Secretary of Agriculture is empowered to regulate the raisin industry through a program of the same type as the California program involved in this case.

B. A STATE PROGRAM WOULD ORDINARILY BE INVALID IF A FEDERAL ORDER WERE IN EFFECT

We have shown that, in the Agricultural Marketing Agreement Act, Congress authorized the Secretary of Agriculture to promulgate orders regulating the same transactions as are covered by the California raisin program. Although a similar federal plan was in effect in 1934-35, no federal order applicable to raisins has been issued since then.

It would obviously be impossible for the state and federal governments, unless acting cooperatively, at the same time to establish and operate stabilization and surplus pools through which growers were required to dispose of specified percentages of their crop. The state program here involved required the growers to turn over 70 percent of their crop to the Zone stabilization and surplus pools. If a similar federal program were established, the growers obviously could not de-

liver 70 percent of their products to both state and federal governments. If a grower complied with one order, he would inevitably disregard the other. In such circumstances, the federal program would prevail, and the state program would be superseded. We think that as a general thing, even apart from such a definite conflict, the separate regulation of marketing by the two sovereignties would cause such contradiction and confusion as to require abandonment of the state program.²²

C. THE VALIDITY OF THE STATE PROGRAM IN THE ABSENCE OF A FEDERAL ORDER

The question here is whether the state program may stand in the absence of a federal order.

Whether a federal regulation of commerce delegating to administrative officials authority which has not been exercised supersedes a state law depends upon the intention of Congress. If it was intended that the federal administrative agency be given exclusive authority over the subject, the states may not establish a regulatory system of their own. If, on the contrary, Congress did not intend the subject to go unregulated in the absence of federal administrative action, state laws applicable to the subject are valid. As the Chief

²² This would, of course, not be true if care were taken to see that the programs were complementary or jointly administered, pursuant to Sec. 10 (i) of the Federal Act. Cf. *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, 548.

Justice declared in his dissenting opinion in *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148, 170:

In such circumstances the state's authority to act turns upon the question, which this Court has often been called upon to answer, whether the failure of the federal official to exercise his full power is in effect a controlling administrative ruling that no further regulation by either federal or state government is needful. * * *

This principle has been frequently applied. In *Napier v. Atlantic Coast Line Railroad Co.*, 272 U. S. 605, the Court held that the states could not supplement the Federal Boiler Inspection Act, which authorized the Interstate Commerce Commission to require locomotives to be equipped with devices essential to safety, by compelling the use of safety devices in addition to those required by the Commission. The failure of the Commission to impose particular requirements was treated as a finding that they were not necessary. In *Northern Pacific Ry Co. v. Washington*, 222 U. S. 371, the Court held that the provision in the Federal Sixteen Hour Law that the statute should become operative a year from its enactment was a manifestation of congressional intention that the railroads be given a year to adjust themselves to the new requirement, which precluded the states from imposing an identical rule during the interim period. See to the same effect *Oregon-Washing-*

ton R. & Nav. Co. v. Washington, 270 U. S. 87; *Alabama and V. Ry. v. Jackson and E. Ry.*, 271 U. S. 244; *Missouri Pacific R. Co. v. Porter*, 273 U. S. 341. On the other hand, in *Welch Co. v. New Hampshire*, 306 U. S. 79, the Court upheld a state maximum hours law for drivers of motor vehicles in the absence of action by the Interstate Commerce Commission under Section 204 of the Motor Carrier Act; on the ground that Congress did not intend state safety measures to be nullified before the federal agency prescribed regulations on the subject. See to the same effect *Eichholz v. Public Service Commission*, 306 U. S. 268; *Mintz v. Baldwin*, 289 U. S. 346; *Northwestern Bell Telephone Co. v. Nebraska State Ry. Commission*, 297 U. S. 471. Cf. *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740.

A definitive statement either in the federal statute or in its legislative history manifesting a congressional intention that the failure to exercise administrative powers would permit or preclude state regulation would, of course, solve the problem. But, as has generally been true in other cases, no such expression of opinion on the point is available here. In such circumstances it is necessary to compare the federal and state statutes and to endeavor to ascertain from the manner in which they will operate whether and to what extent the state law, as here applied, "stands

as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U. S. 52, 67. If the purpose of the federal Act cannot "be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power." *Savage v. Jones*, 225 U. S. 501, 533; *Corn Products Refining Co. v. Eddy*, 249 U. S. 427, 435; *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148. With these considerations in view, we turn to an analysis and comparison of the pertinent provisions of the two statutes.

1. *The statutory standards and policies*

The federal statute provides that the Secretary of Agriculture shall hold a public hearing if he "has reason to believe," and shall issue an order if he "finds," that the issuance of an order "will tend to effectuate the declared policy of" the Agricultural Marketing Agreement Act. Section 2 of the Act, entitled "Declaration of Policy," provides that: "It is hereby declared to be the policy of Congress" (1) to "maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to

articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period" 1909-1914, and (2) "to protect the interest of the consumer" by approaching that price level (hereafter referred to as the parity level) in a manner deemed "to be in the public interest and feasible in view of the current consumptive demand," and by "authorizing no action" designed to maintain prices above that level. If the purchasing power during the base period specified in Section 2 "cannot be satisfactorily determined from available statistics of the Department of Agriculture," Section 8e permits the Secretary of Agriculture to establish a base period for such portion of the time from August 1919 to July 1929 as he finds such statistics to be available.

The California Agricultural Prorate Act³³ provides that the Agricultural Prorate Advisory Commission shall approve a proposed marketing program if it "is reasonably calculated to carry out the objectives" of that Act (Section 15). These objectives, as set out in Section 1, are to eliminate "the unnecessary and unreasonable waste of agricultural wealth," including "economic waste" (Section 2 (b)), "involved in the

³³ Cal. Stats. 1933, c. 754, as amended, now found in Deering's Gen. Laws 1937, Art. 143a, p. 60, 1939 Supp., p. 993, 1941 Supp., p. 1846. The California act is attached as Appendix B.

harvesting or preparation for and delivery to market of agricultural commodities for which there exists only a limited consumer demand."

After a proposed marketing program has been approved, Section 18.1 provides that:

The marketing program to be made effective in any proration zone shall be so formulated as to rectify as far as possible the adverse marketing conditions specified in Section 10 hereof, and to maintain market stability under the limitations of this act. * * *

The "adverse marketing conditions specified in Section 10" consist of the occurrence of "agricultural waste," and the imperilling of the economic stability of the industry concerned "by the existence or imminence of a seasonal or annual surplus." Section 10 also requires the Commission to find whether the operation of a proration program will result in unreasonable profits to producers and whether the commodity cannot be marketed otherwise at a reasonable profit to producers, but the statute does not appear to make findings on this point relevant or controlling in any connection."

Section 19.1 provides that the program committee shall be empowered to adopt any of a

"Under the original 1933 Act no program could be approved unless the findings required by Section 10, including a finding that the program would not result in unreasonable profits to producers, were made. This requirement was eliminated in 1939. Cal. Stats. 1939, c. 894.

number of specified means "for the purpose of minimizing the effect of surpluses or other adverse market conditions." The Committee may establish surplus, stabilization, and diversion pools. The contents of surplus and diversion pools are to be disposed of so as "to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade" (Section 19.1 (a) (1), (3)). The contents of stabilization pools are to be disposed of "as the program committee deems advisable, and consistent with the maintenance of stabilized marketing conditions" (Section 19.1 (a) (2)). The Committee may also, by means of volume or time limitations, diversion, or other means, "adopt and apply methods for correlating the marketable supply of any commodity to the reasonable market demands therefor" (Section 19.1 (d)).

The exercise of the powers granted to the program committees are subject to the approval of the State Director of Agriculture, but he is to approve if he finds that the Committee is conforming to the provisions of the program and the Act (Section 22).

This review of its provisions indicates that the objective of the California Act is to prevent excessive supplies of agricultural commodities from "adversely affecting" the market. And although the statute speaks in terms of "economic stabil-

ity" and "agricultural waste," rather than of price, it is apparent from the Act as a whole that the "adverse marketing conditions" feared are low prices to the producers. As the raisin program itself demonstrates, the Act does not prevent waste of agricultural commodities in any physical sense. Although one of a number of devices available to a program committee is production control, the emphasis is upon pooling programs which dispose of all of a commodity, after it has been produced, in a manner which will prevent the "excess" portion of the supply from forcing down the price of the remainder.

The state programs, including the raisin program, thus do not control production, but marketing. The raisin program is entitled "Marketing Program for Raisins."³⁵ The Inferior Raisin and Surplus Pools are to be disposed of at the prices most favorable to the producers, but outside of "normal marketing channels."³⁶ The raisins in the stabilization pool are to be sold "in such a manner as to maintain stability in the markets and to dispose of such raisins" at prices "most advantageous to the producers" but at not "less than the prevailing market price."³⁷

³⁵ See appellants' Statement as to Jurisdiction, p. 7. The state program is printed in full in the jurisdictional statement, pp. 7-37, and accordingly has not been reprinted in the record.

³⁶ Art. IV, Sec. 4; Art. V, Sec. 4.

³⁷ Art. VI, Sec. 4. The proviso as to no sales being made at less than the prevailing market price excludes raisins

The object of the federal statute is also to maintain "orderly marketing conditions," but for the express purpose of attaining parity prices for farm products, and with the additional provisions that, in the interests of consumers, current consumptive demand is to be considered and that no action shall be taken for the purpose of maintaining prices above the parity level (Sec. 2).

Both federal and state acts are designed to help the farmer by raising the price level of agricultural products through programs of the same general character. The state act may become operative whenever there is a surplus in excess of reasonable market demands, the federal act whenever prices are below parity. The state program is intended to "stabilize" the market without reference to any particular level of prices; the federal act, to bring about prices at the parity level but no higher. The federal act would permit prices to exceed parity, but only through the play of normal economic forces.

The California statute contains no reference to parity, and administrative action taken under it is not in any way made dependent upon parity or the determinations by the Department of Agriculture as to the base period or the prices of commodities purchased by farmers. It is not to be

subject to loaning or pooling arrangements with the Federal Government.

presumed that the state officials administering a proration program under such a statute would make any effort to avoid maintaining prices above parity. Although raisin prices were not above parity while the 1940 seasonal program was in effect, this has not been true as to other commodities. In particular, a state program for asparagus for canning has been in operation during a period in which prices were consistently well above parity."

The objects of the state law are thus not exactly the same as those of the federal act. The latter pays more heed to the interests of the consumer. To the extent that Congress intended that a marketing program not be employed to force prices above parity and that higher prices result only from the free interplay of natural economic forces, a state program which deliberately applied artificial restraints in order to maintain prices above the parity level would be incompatible with the purpose of the federal law.

This would not be likely to occur as to a state program approved and supported by the Department of Agriculture. But in the absence of some form of cooperation between state and federal agencies, a state, even if it desired to do so, might have difficulty in adjusting its program to the flexible parity price, which fluctuates with the

²² This information has been obtained from the Department of Agriculture.

prices of things farmers buy and which is based upon figures deemed "satisfactory" to the Secretary of Agriculture." Nor would it be feasible to regard state programs as valid whenever they were not maintaining prices above the parity level. In that case the burden of determining when parity was reached would be imposed upon the courts, where the same difficulties would be encountered. Moreover, the judicial machinery is not adapted to the control of a price level which changes from day to day.

It is of course quite likely that many state programs have not been operated in a manner which conflicts with the policy of the federal act. Nevertheless the policies of the statutes are somewhat different, and the potentiality of conflict exists.

* The parity level for a particular commodity is, of course, dependent upon the period used as a base. Section 2 defines that period as 1909-1914 (except for tobacco and potatoes, as to which the base period is to be 1919-1929), but Section 8e requires the Secretary of Agriculture to use a different period if he determines that there are no satisfactory available statistics of the Department of Agriculture for that time. Section 8e demonstrates that the statistics to be used in determining the farmer's purchasing power and parity prices are those of the United States Department of Agriculture, and that the precise period to be employed in computing parity is dependent to some extent on the Secretary's opinion as to the satisfactory nature of the statistics available for the specified years. See *Wrightwood Dairy Co. v. United States*, 127 F. (2d) 907 (C. C. A. 7), on remand from this Court, in which the Circuit Court of Appeals upheld the exercise of the Secretary's discretion in changing the base period for the Chicago Milk Marketing Order.

Only when the state program is in some manner approved by the Department of Agriculture would there be any reasonable assurance that conflicts in policy would be avoided.

2. *The mandatory language of the federal act*

As has been indicated, a state program would be superseded by a federal order covering the same subject, and a state program maintaining prices above parity would be incompatible with the purposes of the federal act. The only time when a state marketing program would not run counter to federal policy would be when the price of a commodity was below the parity level and no federal program was in effect. The question remains as to whether Congress intended that the Secretary take steps to establish a federal program whenever such a situation called for regulation, and if that be the case, whether any room at all is left for action by the states.

Section 8c (3) of the Agricultural Marketing Agreement Act provides that—

Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he *shall* give due notice of and an opportunity for a hearing upon a proposed order. [Italics supplied.]

Section 8c (4) provides that—

After such notice and opportunity for hearing, the Secretary of Agriculture *shall* issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity. [Italics supplied.]

Section 8c (8) provides that no order shall become effective unless the handlers of at least fifty per cent of the volume of the commodity have signed a marketing agreement with provisions similar to those in the order,⁴⁰ and unless the order is approved by two-thirds of the producers by number⁴¹ or by volume.

Section 8c (9) provides that if the specified percentage of the handlers fails or refuses to sign a marketing agreement the Secretary may nevertheless issue an order, with the approval of two-thirds of the producers by number⁴² or by volume, if, with the approval of the President, he determines (a) that the handlers' failure or refusal to sign a marketing agreement "tends to prevent the effectuation of the declared policy,"

⁴⁰ For California citrus fruits the required percentage is 80.

⁴¹ For California citrus fruits the required proportion is three-quarters.

⁴² See note 41.

and (b) "that the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy".⁴

In brief, if the Secretary secures the approval of the requisite percentages of handlers and determines that the order is favored by the requisite percentage of producers and "will tend to effectuate the declared policy," he shall issue such order; if he fails to obtain the approval of the handlers, he must find in addition that this failure tends to prevent effectuation of the statutory policy and that the order is the only practical means of achieving it, and these findings must be approved by the President.

The committee reports, in summarizing these provisions, declare that if the Secretary finds the facts required, "he *must* issue an order." H. Rep. No. 1241, 74th Cong., 1st Sess., pp. 8-9; S. Rep. No. 1011, 74th Cong., 1st Sess., p. 9.

These statutory provisions would seem to indicate that Congress intended to impose upon the Secretary, subject to the limitations as to handler and producer approval, a mandatory duty to establish a marketing program whenever necessary

⁴ Section 8c (19) provides for a producer referendum to aid the Secretary in determining the fact of producer approval. The Secretary is also required to terminate an order at the end of any marketing period if he finds that such termination is favored by a majority of producers in number and volume. Section 8c (16) (B).

to the attainment of the statutory policy of maintaining a floor under farm prices.

Although the statute seems to impose a mandatory duty upon the Secretary, this does not necessarily mean that when prices are below parity for any of the commodities covered, he must automatically institute proceedings leading to an order. For he must have "reason to believe" that the order will "tend to effectuate the declared policy" (Section 8c (3)). There may be practical reasons why an order will not be useful even though prices are below parity. In particular, if an order is not likely to receive the substantial producer and handler approval required, he could not have reason to believe that it would effectuate the statutory policy. Since the support of the persons to be regulated is necessary both in order to facilitate enforcement and to satisfy the statutory requirements, the Secretary does not indulge in the futile practice of initiating programs whenever statistics reveal prices to be below parity, but only when a request for assistance comes from a substantial number of producers. Experience has demonstrated that if producers desire a program, they will ask for it; if they do not, they will not approve it. There is also the possibility that the Secretary may find that a state program was satisfactorily achieving the policy of the federal Act, and that for that reason a federal order would not further effectuate

that policy. If producer but not handler approval were available, a state program might stand if the Secretary found that because of it a federal order was not "the only practical means" of advancing the producers' interests.

These reasonable qualifications are entirely consistent with a congressional intention that a program should be established whenever it will aid in bringing prices up to parity, if the producers concerned approve. Such an intention is, on the whole, not compatible with the view that state programs (unless found by the Secretary to be consistent with the federal policy) may operate in the same field.

3. The effect of the provisions relating to producer approval

The field in which a state may, consistently with the intention of Congress, establish a marketing program not approved by the Secretary for a product subject to the federal act thus seems to be limited to situations in which the price is below parity and a federal program is not approved or desired by the requisite percentage of producers. This leads to a consideration of the effect of the state statute upon the operation of the producer approval provisions of the federal act."

No program under the Agricultural Marketing Agreement Act can become effective unless the

"Section 8c (8), (9), (16) (B), (19), *supra*, pp. 37-38.

Secretary determines that it is approved by two-thirds of the producers, by number or volume. Under the California law (Section 16) a program must receive the assent of 65 percent of the producers by number and 51 percent by volume.

In the absence of any state proration statute or program the question before the producers when a federal program is submitted to them is whether or not they favor a restrictive regulation the purpose and probable effect of which would be to increase the prices they will receive. If they think the program will be of benefit to them, they will approve the imposition of the restrictions. This, we believe, was the issue which Congress intended the producers to determine.

Entirely different considerations will guide the producers voting on a federal order if a competing state program is in the picture. They will not then be concerned merely with whether there should be an unregulated market or a federal order, the question which Congress intended to submit to them. If a state program is in effect, a producer would not favor the issuance of a federal order unless for some reason he preferred federal to state regulation. In such circumstances a federal program could not become effective unless it was sufficiently more attractive or appealing than a state program to secure the approval of two-thirds of the producers.

There are, of course, many reasons why farmers in a state might prefer state to federal regula-

tion. They might prefer to be regulated by persons whose tenure of office is subject to local suffrage, or, perhaps, whom they know. They might think that such persons or a local government might be more amenable to their wishes. They might think that such persons, operating under a statute less concerned with the consumer, might permit the program to operate more to the advantage of the farmer, without regard for the consumers, *particularly if the latter were located mainly in other states*. They might feel that the provisions of the state statutes would allow the establishment of higher prices than the federal. The issue upon which they would vote, accordingly, would not be regulation or no regulation, but federal regulation, state regulation, or no regulation.

The federal order would not secure approval unless it outbid the state program for the farmer's support. We believe that this was not what Congress contemplated when the provision for producer approval was included in the federal statute. It was not intended that farmers indicate their choice between a plan prepared by the Secretary pursuant to the policy of the federal law and a competing state program which might promise the farmers more at the expense of the consumers.

The very existence of a state program thus would interfere with the expression of producer approval contemplated in the Agricultural

Marketing Agreement Act. A state program would impede and obstruct the operation of the federal statute since a federal order would need to overcome an additional and substantial obstacle before obtaining the producer approval required. For orders which farmers would otherwise have favored would not become operative unless they promised more than the state program. This in itself would tend to impair the effectiveness of and prevent the effectuation of the policies of Congress.

4. Cooperation between the Secretary of Agriculture and the states

The only provision in the Agricultural Marketing Agreement Act which relates to possible state action is Section 10 (i), which reads as follows:

The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to

avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: *Provided*, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

This section, of course, contemplates that there may be some state marketing orders. The references to "uniformity in the formulation, administration, and enforcement of federal and state programs" and to "complementary" federal orders show that Congress had in mind state programs regulating intrastate transactions paralleling federal orders regulating interstate. Such an arrangement was entered into for regulating the marketing of milk in the New York milkshed. See *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, 548.

The Committee reports state (H. Rep. No. 1241, 74th Cong., 1st Sess., pp. 22-23; S. Rep. No. 1011, 74th Cong., 1st Sess., p. 15):

This authorization is to carry out the declared policy of the title and looks to securing voluntary uniformity in the formulation, administration, and enforcement of State and Federal programs relating to the regulation of the production, handling, marketing, and sale of agricultural commodities and their products.

Notwithstanding the authorization of co-operation contained in this section, there is nothing in it to permit or require the Federal Government to invade the field of the States, for the limitations of the act and the Constitution forbid Federal regulation in that field, and this provision does not indicate the contrary. Nor is there anything in the provision to force States to co-operate. Each sovereignty operates in its own sphere but can exert its authority in conformity rather than in conflict with that of the other.

This language, and in particular the reference to each sovereignty operating "in its own sphere", appears to assume that in this field the powers of state and nation are exclusive rather than concurrent. Whether or not this assumption is correct,⁴⁵ it manifests an understanding that Con-

⁴⁵ *Milk Control Board v. Eisenberg Farm Products Co.*, 306 U. S. 346, decided in 1939, upheld the power of a state to

gress was exclusively occupying the field constitutionally open to it and permitting the states to regulate other intrastate transactions. Cf. *Parker v. Motor Boat Sales, Inc.*, 314 U. S. 244; *Illinois Natural Gas Co. v. Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 508. Congress was not enlarging the states' jurisdiction by authorizing them to regulate subjects which would otherwise have fallen within the exclusive federal domain. Nor is there any reason to believe that Section 10 (i) was intended to give the states independent power to regulate the very transactions which Sections 8b and 8c were placing within the Secretary's control.

5. *The Commodity Credit Corporation Loan Agreement*

The approval given by the Department of Agriculture to the state program was embodied in the loan agreement between the state and the Commodity Credit Corporation. Section 302 of the Agricultural Adjustment Act of 1938 (52 Stat. 43, 7 U. S. C., Sec. 1302 (a)) provides that:

fix interstate milk prices where only a local situation was intended to be controlled; no point was raised as to the relationship of the state law to federal agricultural legislation. The states presumably also have power (in the absence of a federal program) over such intrastate transactions as were held subject to federal regulation in *United States v. Wrightwood Dairy Co.*, 315 U. S. 110. We think a different rule may be applicable where a state seeks to control the entire supply and price structure of a commodity distributed interstate throughout the nation. See Point III, p. 71, *infra*.

The Commodity Credit Corporation is authorized, upon recommendation of the Secretary and with the approval of the President, to make available loans on agricultural commodities (including dairy products). Except as otherwise provided in this section, the amount, terms, and conditions of such loans shall be fixed by the Secretary, subject to the approval of the Corporation and the President.

At the time this case arose the succeeding subsections provided that the corporation should make nonrecourse loans to certain producers of wheat, cotton, and corn at specified proportions of the parity price." As to other agricultural commodities the Corporation has made loans when such action would tend, in its opinion, to carry out the policies of substantive federal agricultural legislation."

This section authorizes the Corporation to make loans on agricultural commodities upon the recommendation of the Secretary of Agriculture and the approval of the President. Since there

* These provisions were changed by Paragraph 10 of the Joint Resolution of May 26, 1941, 55 Stat. 203, 7 U. S. C. (Supp. I), Sec. 1340 (10), so as to require loans at 85% of parity to cooperating producers of cotton, corn, wheat, rice, and tobacco. For other recent legislation see 55 Stat. 498, 15 U. S. C. (Supp. I), Sec. 713a-8.

* The Commodity Credit Corporation was originally established by Executive Order No. 6340, Oct. 16, 1933. Its existence and functions "including the making of loans on agricultural commodities" were subsequently ratified by Con-

was a surplus of raisins and since raisin prices were below parity, it was not inappropriate and was entirely lawful under this section for the Corporation to use its resources to lend money to the raisin industry. And the power of the Secretary to fix the terms and conditions of such loans authorized him to impose conditions which would carry out the policy of the Act and at the same time protect the Corporation's investment.

As has been shown, the loans were conditional on the adoption by the state committee of the seasonal marketing program here in issue, subject to the control of prices and sales policies by a committee appointed by the Secretary. The purpose of requiring a restrictive marketing program was to assure the Corporation that a surplus overhanging the market would not unduly depress prices and also not prevent the raisins held as security from being sold at prices high enough to pay off the loan. The reason for subjecting the sales price to federal approval was to see that the price received was both consistent with the federal statutory policy and high enough to repay the loan, but not so high as to prevent the total

gress. 49 Stat. 4, 52 Stat. 107, 15 U. S. C. sec. 713-713a-7. None of these provisions are as specific in their grant of authority as Section 302(a) of the Agricultural Adjustment Act, quoted in the text. The Act of July 1, 1941, 55 Stat. 498, 15 U. S. C. (Supp. I) sec. 713a-8, enacted after approval of the raisin program here involved, comes under the heading of emergency legislation and would not seem to be applicable to this case.

quantity of raisins taken as security from being sold. See pp. 18-20, *supra*. These provisions were therefore appropriate means of safeguarding the loan and effectuating the policy of the federal Act."

Although Section 302 (a) does not in terms require that loans be made only in order to effectuate the policy of substantive agricultural legislation, the section has been so construed by the Department of Agriculture. This construction is certainly a reasonable one. The section is a part of the Agricultural Adjustment Act of 1938, the regulatory provisions of which applied to cotton, wheat, corn, tobacco, and rice, and Section 2 declared it to be the policy of Congress to achieve the statutory objectives through loans, *inter alia*." The objects of the Agricultural Mar-

"This does not mean that the state program was consistent with the Sherman Act, or that Sec. 302 (a) authorized the approval of programs unlawful under that statute. See pp. 66-70, *infra*.

"Section 2 of the Agricultural Adjustment Act of 1938 states that—

"It is hereby declared to be the policy of Congress
 • • • to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices." (7 U. S. C., Sec. 1282, February 16, 1938, 52 Stat. 31.)

keting Agreement Act of 1937 (see pp. 28-29, *supra*), which was derived from the predecessor of the Agricultural Adjustment Act, and which deals mainly with fruits, vegetables, and milk, are fundamentally the same. Accordingly, conditions imposed in a loan agreement should be treated not only as legitimate means of protecting the loan from a financial point of view but also as an expression of opinion by the Department of Agriculture that the agreement is consistent with the substantive policies of the Agricultural Adjustment and Agricultural Marketing Agreement Acts. That this was true in this case is confirmed by the fact that federal officials collaborated in the drafting of the 1940 state raisin program and, as representatives of the Department of Agriculture in its capacity as pledgee, were permitted to control its marketing policies. These manifestations of approval of the state program by the very persons charged with the administration of the federal agricultural marketing policy are sufficient, in our opinion, to show that the program here involved was not in any way inconsistent with the Agricultural Marketing Agreement Act.

This does not mean that the state program is to be regarded as *authorized* under the federal statute. To determine that question the relationship between the Marketing Agreement Act and the Sherman Act must be examined, and the one construed in the light of the other. See pp. 66-70, *infra*.

Although our final conclusion is that the 1940 California Raisin Program is not invalidated by federal agricultural legislation, looked at as a whole and in the light of what was done under it, we have stressed the difficulties which would have arisen in the absence of the Secretary of Agriculture's manifestation of approval. This emphasis might seem undue if this were the only state program or the only case, but the existence of other programs, one of which will shortly be before this Court,³⁰ made it advisable to give the Court^a full discussion at this time. A state program applicable to the entire supply of a commodity distributed in interstate commerce would, in our opinion, be invalid in the absence of the Secretary's approval.

In short, our position is that a state program not sanctioned or approved by the Department of Agriculture would stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U. S. 52, 67, *supra*, p. 28. But where, as here, a state program is prepared and administered with the active collaboration of the Department of Agriculture, no such objection can be raised. In such circumstances it must be

³⁰ *Agricultural Prorate Commission v. Mutual Orange Distributors*, appeal pending, No. 288, involving the validity of the California Lemon Prorate Program. The State Lemon Program was never approved, sanctioned, or supported by the Department of Agriculture.

assumed that the state program aided in accomplishing the policies of the federal statute rather than the contrary.

II

THE RAISIN MARKETING PROGRAM AND THE SHERMAN ACT

Although the states may enact certain types of statutes which affect interstate commerce (see pp. 71-90, *infra*), it is, of course, established that where Congress has entered the field all inconsistent state legislation is superseded. *Illinois Natural Gas Co. v. Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 510; *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148, 156. This is true both when there is direct and positive conflict between the statutes (e. g., *Illinois Natural Gas Co. v. Central Illinois Pub. Serv. Co.*, *supra*), and also when the state statute, although not in express conflict with any provision of the federal law, nevertheless "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U. S. 52, 67. In these circumstances "the entire scheme" of the federal statute must be considered to determine whether its operation would be "frustrated" and its provisions "refused their natural effect" if the state law were permitted to stand. *Savage v. Jones*, 225 U. S. 501, 533. See pp. 27-28, *supra*.

In determining in the present case whether the California raisin-marketing program is rendered invalid by the prior action of Congress in passing the Sherman Act, three questions seem to require consideration:

(1) Whether the program conflicts with the policy laid down in the Sherman Act for the regulation of interstate and foreign commerce.

(2) Whether state laws, otherwise valid, can stand if inconsistent with the Sherman Act.

(3) Whether any subsequent federal legislation or action taken thereunder can be construed as exempting the raisin marketing program from the prohibitions of the Sherman Act.

A. THE RAISIN MARKETING PROGRAM IS INCONSISTENT WITH THE POLICY EMBODIED IN THE SHERMAN ACT

Section 1 of the Sherman Act prohibits every contract, combination, or conspiracy "in restraint of" interstate or foreign commerce. Section 2 makes it unlawful to monopolize or to attempt to monopolize "any part"⁵¹ of such commerce.

The general scope and purposes of these provisions are well known. "Under the Sherman

⁵¹ "The commerce referred to by the words 'any part' . . . has both a geographical and a distributive significance, that is it includes any portion of the United States and any one of the classes of things forming a part of interstate and foreign commerce." *Standard Oil Co. v. United States*, 221 U. S. 1, 61.

Act 'competition not combination, should be the law of trade.' " *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457, 465. "The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services * * *." *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 493.

1. The raisin marketing program conflicts with the prohibition against monopolizing and attempting to monopolize interstate and foreign commerce laid down in Section 2. The producing area to which the program applied was practically the sole source of supply for the entire country (*supra*, p. 4). The program provided for control over the marketing of all raisins produced within this area. All of these raisins (except the so-called "free tonnage" which constituted 30% of those which the Committee graded as "standard raisins") were required to be delivered to the inferior raisin, surplus, or stabilization pools operated by a program committee composed of producers.⁵² The marketing of these raisins was centralized in the committee. Raisins in the two former pools were not permitted to be marketed for consumption as raisins; they

⁵² The committee is appointed by the State Director of Agriculture and its activities are subject to his approval. California Agricultural Prorate Act, Sections 15, 22. See pp. 7-31, *supra*.

could be sold only for "assured by-product" purposes. Raisins in the stabilization pool could be marketed only subject to price-maintenance and price-fixing restraints (see pp. 8-9, *supra*). As to the remaining raisins, the so-called "free tonnage," they were forbidden entry into commercial channels of trade unless accompanied by a secondary certificate, which the Committee issued to the producer "when he has satisfied the pool requirements and upon payment of the certificate fee of \$2.50 per ton" (R. 19).

There could hardly be, we submit, a clearer case of monopolization of interstate and foreign commerce than exercise of control over the marketing of the nation's entire supply of a commodity. Yet this is precisely what the raisin marketing program was designed to accomplish.

2. Since the program had the purpose and effect of limiting the supply of raisins entering and moving in interstate and foreign commerce and of raising and stabilizing the price of raisins in such commerce, it also is inconsistent with the prohibition against restraints of trade contained in Section 1 of the Sherman Act.

The trade in raisins marketed for consumption as such constitutes a separate and distinct class of trade from trade in raisins marketed for use in the manufacture of by-products, such as wine. We have previously pointed out that, as to the former trade, the raisins in both the surplus pool (20% of

the standard raisins) and inferior raisin pool were prohibited entry into interstate or foreign commerce. A combination "to restrain or control the supply [of a commodity] entering and moving in interstate commerce * * * is a direct violation of the Anti-Trust Act." *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310.

Furthermore, the object of the entire program was to stabilize the price of raisins. To this end the raisins in surplus and inferior raisin pools were not to be sold into "normal marketing channels" (Art. V, Sec. 4; Art. IV, Sec. 4) and raisins in the stabilization pool were to be sold "in such manner as to maintain stability in the market and dispose of such raisins," but in any event (except where required by loan arrangements with the federal government) not at less than the "prevailing market price" (Art. VI, Sec. 4).

That the Sherman Act condemns this kind of a price-fixing arrangement is settled beyond dispute. This Court has recently declared that it has for over forty years consistently "adhered to the principle that price-fixing agreements are unlawful *per se* under the Sherman Act and that no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense." *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 218. Prices are fixed within the meaning of this principle "if by various formulae they are

related to the market prices" (*id.*, p. 222). A combination formed for the purpose and with the effect of "pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se*" (*id.*, p. 223). The Act places beyond the pale any "combination which tampers with price structures" even though "the members of the price-fixing group were in no position to control the market" (*id.*, p. 221).

Although a system of price fixing may be invalid even in the absence of such a showing (*ibid.*), there can be no doubt that the plan involved in this case controls the market price. This would seem apparent, in view of the proportion of the supply controlled by the committee and its power to keep such supplies off the market until satisfactory prices were offered. The record shows that in the late summer of 1940, prior to announcement of the program, the market price for raisins sold by producers to packers was \$45 a ton; after September 7, 1940, when the program went into effect, this price became \$55 a ton, a price increase of 22%. See pp. 9-10, *supra*. By August of 1941 every pound of raisins delivered into the surplus and stabilization pools had been disposed of at an average price of \$60.51 per ton.⁵³

3. Since 90 to 95% of California raisins move in interstate commerce, and since California produces substantially all of the raisins consumed in

⁵³ See appellants' brief, p. 16.

this country, the above restraints clearly relate to interstate commerce within the meaning of the Sherman Act. This would be so, irrespective of whether the sales by growers to packers were themselves interstate. See pp. 83-85, *infra*. For the limitation upon the total supply and the prices paid by the packers would undoubtedly directly affect and restrain the supply and price of the raisins in interstate commerce. As this Court said in *Local 167 v. United States*, 291 U. S. 293, 297:

But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commerce. *United States v. Brims*, 272 U. S. 549. *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310. *United States v. Swift & Co.*, 122 Fed. 529, 532-533. Cf. *Swift & Co. v. United States*, 196 U. S. 375, 398. The Sherman Act denounces every conspiracy in restraint of trade including those that are to be carried on by acts constituting intrastate transactions. *Bedford Co. v. Stone Cutters Assn.*, 274 U. S. 37, 46. *Loewe v. Lawlor*, 208 U. S. 274, 301. * * *

See also *United States v. Patten*, 226 U. S. 525; *Standard Oil Co. (Indiana) v. United States*, 283

U. S. 163, 169; *Apex Hosiery Co. v. Leader*, 310 U. S. 469.

**B. THE SHERMAN ACT SUPERSEDES STATE LEGISLATION
CONFLICTING WITH THE POLICY IT ESTABLISHES**

The Sherman Act does not in terms define its scope in so far as it applies to the activities of state governments. But nothing in the Act precludes its application to programs sponsored by the states. Sections 1 and 2 prohibit unlawful conduct by "persons," and the word "person," as defined in Section 7, in some connections at least, may include a state. *Georgia v. Evans*, 316 U. S. 159.

But the question we face here is not whether California or its officials have violated the Sherman Act, but whether the state program interferes with the accomplishment of the objectives of the federal statute. A state law may be superseded as conflicting with a federal statute irrespective of whether its administrators are subject to prosecution for violation of the paramount federal enactment.

The Sherman Act was intended to suppress restraints on "commercial competition" in the interstate field. *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 495. The California statute and raisin program, for reasons indicated above, control the supply and price in a manner irreconcilable with that federal policy. Unless sanctioned by state law, the kind of activity carried

on by the Program Committee would plainly have been unlawful.

We have found no decision which explicitly decides whether the Congress which passed the Sherman Act intended to leave to each of the various states freedom to establish regulations in conflict with those prescribed in the Sherman Act, in so far as they related to interstate commerce. But the construction which this Court has placed upon the statute strongly indicates that Congress, in enacting it, did not intend to authorize the states to establish an inconsistent regulatory policy and did not intend to authorize them to exercise their powers in such a way as to limit the scope of the statute's application.

In *Northern Securities Co. v. United States*, 193 U. S. 197, this Court held that an agreement by majority stockholders of two competing interstate railroads to exchange their respective stockholdings for stock of a holding company violated the Sherman Act. The defendants contended that the charge of illegal combination was based upon stock acquisitions which were permitted by the law of the state of incorporation and that therefore the Sherman Act, as it was applied to the defendants, unconstitutionally trespassed upon rights conferred by State law. This Court rejected the contention, saying (pp. 345-346):

No State can, by merely creating a corporation, or in any other mode, project its

authority into other States, and across the continent, so as to prevent Congress from exerting the power it possesses under the Constitution over interstate and international commerce, or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce. It cannot be said that any State may give a corporation, created under its laws, authority to restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress. * * *

While the question under consideration was one of constitutionality, the premise upon which the Court's views rest is that, to the extent that federal and state authority might overlap in the absence of action by Congress, with respect to commerce coming within the general purview of the Sherman Act Congress intended the policy for commerce there declared to override any inconsistent state enactment.

The Court has declared that insofar as restraints on commercial competition were concerned "Congress exercised all the power it possessed." *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 495; *Atlantic Cleaners & Dyers v. United States*, 286 U. S. 427, 435. Congress, of course, has the power to supersede all state legislation in a field it intends to occupy. Certainly Congress cannot be said to have been exercising all

its powers if the Sherman Act is to be interpreted as impliedly conferring upon the several states authority to withdraw from the prohibitions of the Sherman Act that part of interstate and foreign commerce which they choose to subject to an inconsistent regulation. Not only is such an interpretation wholly without support in the language of the statute, which is broad and general, but it is inconsistent with attainment of the purposes and objectives of the act.

In *Northern Securities Co. v. United States*, 193 U. S., at 337, this Court said that Congress in the Sherman Act prescribed "as a rule for interstate and international commerce * * * that it should not be vexed by combinations, conspiracies or monopolies which restrain commerce by destroying or restricting competition." The "rule" laid down by Congress would be seriously impaired if the statute were construed to permit each state to nullify it insofar as interstate or foreign commerce could constitutionally be subjected to state regulation. To recognize any such limitation upon the scope of the Congressional enactment would be to open the door wide to state action destructive of the salutary principle that competition, not combination, "should be the law of" trade among the states.

These principles would unquestionably be applicable to a state law which authorized private interests to engage in conduct contrary to the Sherman

Act. A state statute permitting, or requiring, dealers in a commodity to combine so as to limit the supply or raise the price of a subject of interstate commerce would clearly be void. The question here is whether a state may itself undertake to control the supply and price of a commodity shipped in interstate commerce or otherwise restrain interstate competition through a mandatory regulation.

We believe that, with certain qualifications set out below, the Sherman Act was intended to maintain a competitive economic system free from interference from any source. Although it was primarily directed at private monopolies and trusts, the language and policy of the Act is not limited to such restraints. If labor organizations, for example, seek to restrain commercial competition, their acts may be unlawful. *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 501. Although the question is more difficult, the statute, in our opinion, likewise protects interstate commerce against restraints upon commercial competition imposed pursuant to the mandate of state law.

This does not mean that every restriction upon interstate trade imposed by state law contravenes the Sherman Act. It seems clear that Congress, when it enacted the statute, did not intend to deprive the states of their normal "police"⁵⁴ powers over business and industry. Thus a state

⁵⁴ As to the meaning of "police," see p. 78. *infra*.

conservation law would not be deemed to violate the policy of the Sherman Act (cf. *Champlin Refining Co. v. Corporation Commission*, 286 U. S. 210), although a private agreement limiting production of a commodity marketed in interstate commerce would probably be unlawful even if entered into for conservation purposes. Accordingly, in determining the restraints and monopolies to which the statute applies, the standard applicable to state action may differ from that governing private conduct.²² For example, in the field of public utilities, a state can undoubtedly regulate rates without running afoul of the Sherman Act notwithstanding the fact that the rate regulation may embrace interstate commerce (*Pennsylvania Gas Company v. Public Service Commission*, 252 U. S. 23). Likewise there is no necessary inconsistency with the policy of the Sherman Act if a state, in fixing prices on a local scale, subjects some interstate sales to price-fixing (*Milk Control Board v. Eisenberg Farm Products Co.*, 306 U. S. 346), although the fixing of prices by private agreement for even a small amount of interstate commerce would violate the law.

Although Congress plainly did not regard local laws in these fields as incompatible with the Sher-

²² This differentiation may be justified on the basis of the "rule of reason," or, more appropriately, on the basis of the intention of Congress, from which the "rule of reason" itself was derived. *Standard Oil Co. v. United States*, 221 U. S. 1.

man Act, we believe that the same cannot be said when the state statute is *designed* directly to control the competitive aspects of an industry in a manner which will have more than local effect. A state legislative program eliminating competition on such a scale is irreconcilable with the very essence of the Sherman Act, the preservation of commercial competition in interstate industries.

The present case, in our view, falls within the latter category, for the California raisin program controls the supply and price of raisins throughout the nation. Where the line should be drawn short of such a situation need not, of course, be determined in this case.

Of all the enactments by Congress under the commerce power, the Sherman Act is the most general in its application and is the only statute of its kind which has stood unchanged as to its basic provisions for over 50 years. The freedom of trade which it is designed to promote is closely analogous to the freedom of trade among the states which the commerce power itself is intended to preserve. Indeed this Court has said that "as a charter of freedom, the Act has a generality and adaptability comparable to that found to be desirable in constitutional provisions." *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 359-360. It is to be noted that the test which we have suggested for determin-

ing the compatibility of state laws with the Sherman Act is very similar to that which this Court has invoked when the question is whether a state statute conflicts with the commerce clause in the absence of federal legislation. See pp. 71-90 *infra*. The Sherman Act may thus be regarded as a Congressional affirmation of the constitutional doctrine that national interstate commercial interests are not to be subjected to restrictive state legislation.

C. THE LOAN AGREEMENT APPROVED BY THE DEPARTMENT OF AGRICULTURE DID NOT EXEMPT THE STATE PROGRAM FROM THE ANTITRUST LAWS

If it be assumed that the California raisin program would otherwise be contrary to the policy of the Sherman Act and therefore invalid, the question still remains as to whether the approval manifested by the Department of Agriculture has the effect of exempting the program from the anti-trust laws.

We take it as established that conduct otherwise in violation of the Sherman Act does not become exempt because of approval by Government officials unless Congress, expressly or by necessary implication, has manifested its intention that conduct so approved shall be lawful. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 225, 227.

The Agricultural Marketing Agreement Act of 1937 "itself expressly defines the extent to which its provisions make the antitrust laws inapplicable." *United States v. Borden Co.*, 308 U. S. 188, 200: Section 8b, after authorizing the Secretary of Agriculture to enter into marketing agreements with processors, producers, and others engaged in the handling of any agricultural commodity, provides—

The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States * * *.

Section 3,⁵⁶ after providing for mediation or arbitration of certain disputes between cooperatives composed of milk producers and purchasers or distributors of milk and for awards or agreements resulting from arbitration or mediation, provides in subsection (d)—

No meeting so held, and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States.

Section 8c, which authorizes the Secretary to issue orders, contains no express exemption, but it is, of course, clear that Congress did not intend the issuance of or compliance with such orders to be in violation of the antitrust laws.⁵⁷

⁵⁶ This section, as amended by the 1937 act, appears on pp. 18-19 of the pamphlet attached as Appendix A:

⁵⁷ There is also a reference to such an exemption in Section 8d (1). The section authorizes the Secretary to obtain

"These explicit provisions requiring official participation and authorization show beyond question how far Congress intended that the Agricultural Act should operate to render the Sherman Act inapplicable. If Congress had desired to grant any further immunity, Congress doubtless would have said so.

"An agreement made with the Secretary as a party, or an order made by him, or an arbitration award or agreement approved by him, pursuant to the authority conferred by the Agricultural Act and within the terms of the described immunity, would of course be a defense to a prosecution under the Sherman Act to the extent that the prosecution sought to penalize what was thus validly agreed upon or directed by the Secretary. Further than that the Agricultural Act does not go." *United States v. Borden Co.*, 308 U. S. 188, 201-202.

Obviously the raisin marketing program does not fall within the specific exemptions in Sections 8b and 3 or within the purview of Section 8c. Nor can Section 10 (i) be regarded as authorizing approval of a program such as this, since it clearly relates only to uniform and complementary federal and state activity. (See pp. 43-46, *supra*.)

from all parties to any marketing agreement and from all handlers subject to an order such information as he finds to be necessary to determine, among other things, "whether or not there has been any abuse of the privilege of exemptions from the antitrust laws."

The federal approval of the state program appears in the loan agreement made by the Commodity Credit Corporation. This agreement finds its statutory basis in Section 302 (a) of the Agricultural Adjustment Act of 1933, considered *supra*, pp. 46-50. We have indicated our view that under this section the Department of Agriculture is authorized to condition its loans on terms which will tend to effectuate the policy of federal agricultural legislation, and that conditions so imposed by the Department are to be regarded as consistent with the policy of such legislation. The loan agreement may thus have been authorized, if only agricultural legislation is considered apart from the Sherman Act. It is to be assumed that the Sherman Act was not in the minds of the persons who approved the terms of the California loan agreement. But the question of the effect of the agreement in granting an exemption from the Sherman Act has now been raised, and we are compelled to conclude that the power to fix the terms and conditions of such loans was not intended to authorize the granting of immunity from the Sherman Act.

Nothing in Section 302 itself suggests that Congress was intending to permit the granting of immunity from the Sherman Act. There is no express exempting clause, and the subject of the section does not, as does Section 8c of the Agri-

cultural Marketing Agreement Act, necessarily imply that the provisions of the Sherman Act are to be waived. Indeed, the section merely authorizes the making of loans, and there seems to be ample scope for its operation without permitting the granting of exemptions from the antitrust laws. Accordingly, we do not think that it should be construed as a provision containing authority to exempt from the Sherman Act.

We assume that it would not be suggested that the Commodity Credit Corporation, acting under Section 302 (a), could exempt borrowers from the necessity of complying with the National Labor Relations Act, the Fair Labor Standards Act, or the Pure Food Laws, for example, through the device of incorporating inconsistent provisions in loan agreements, even if such provisions could be shown to be reasonable means of maintaining farm prices at parity or of improving the borrower's financial condition and thereby protecting the loan. We see no reason why the Sherman Act should fall in a different, less favored category.

It may be argued that Section 302 (a) is intended to permit loans which will effectuate the policies of the Agricultural Adjustment Act and the Agricultural Marketing Agreement Act, and that these statutes are not entirely consistent in their philosophy with the Sherman Act. But it does not follow that loans cannot be made without

the granting of exemptions from the antitrust laws. This case, of course, raises only the question of the effect of a Commodity Credit loan agreement in exempting from the Sherman Act private combinations or state regulations which would otherwise be unlawful. We think that the approval in such agreements of such state or private programs does not grant them any special immunity. No question is presented, however, as to the legality of the activities of the Commodity Credit Corporation or the applicability of the Sherman Act to that agency.

III

THE CALIFORNIA RAISIN PROGRAM IS INVALID UNDER THE COMMERCE CLAUSE APART FROM ANY FEDERAL STATUTE

The Court, in ordering reargument, has requested the parties to discuss the validity of the state statute and program as affected by the Sherman Act and federal agricultural legislation, and has asked the Solicitor General to participate in the case as *amicus curiae*. We assume that the Court did not intend to preclude the Solicitor General from stating his views as to the validity of the state act and program apart from federal legislation, and accordingly we are briefing that question in addition to the issues expressly mentioned.

The Court will not, of course, be called upon to determine this question if it decides that the state program interferes with the accomplishment of policies embodied in congressional legislation. Cf. *Hixes v. Davidowitz*, 312 U. S. 52, 61-62. Nor would the question be presented if the Court were of opinion that Congress had intended to validate state programs approved or controlled by the Department of Agriculture. For since the Constitution places the paramount power over interstate commerce in the Congress, a manifestation of congressional intention will invalidate state laws which would otherwise stand (*Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148, 155) or sanction laws which would otherwise be void (*In re Rahrer*, 140 U. S. 545; *Clark Distilling Co. v. Western Md. Ry. Co.*, 242 U. S. 311; *Whitfield v. Ohio*, 297 U. S. 431; *Kentucky Whip & Collar Co. v. Illinois Central R. Co.*, 299 U. S. 334). Whether the state raisin program contravenes the constitutional provision must therefore be considered on the assumption that Congress has not expressed its intention on the subject one way or the other.⁵⁵

⁵⁵ In Points I and II we have indicated our view that the state program is not in conflict with, although not necessarily authorized by, the expression of congressional intention in federal agricultural legislation and that it is contrary to the manifestation of such intention embodied in the Sherman Act.

Although the commerce clause in terms only vests regulatory power in Congress, it has been construed as in itself preventing states from enacting some types of legislation relating to commerce. This interpretation of the clause finds warrant in its historical background of state rivalry and obstruction to commerce.³⁹ As a consequence, "as this Court has many times decided, the purpose of the commerce clause was not to preclude all state regulation of commerce crossing state lines, but to prevent discrimination and the erection of barriers or obstacles to the free flow of commerce, interstate or foreign." *Di Santo v. Pennsylvania*, 273 U. S. 34, 43-44 (Mr. Justice Stone dissenting); *California v. Thompson*, 313 U. S. 109; *South Carolina Highway Department v. Barnwell Bros.*, 303 U. S. 177, 185-186. Although the fathers of the Constitution may not specifically have foreseen the problem as to the validity of state regulation in the silence of Congress,⁴⁰ it was entirely proper for the Court to construe the Constitution in the light of these purposes and objectives.

³⁹ See *Gibbons v. Ogden*, 9 Wheat. 1, 224-225 (concurring opinion of Johnson, J.); *The Federalist*, Nos. 7, 11, 42; Story on the Constitution, § 259; Farrand, *The Framing of the Constitution*, pp. 5-10 (1913); *South Carolina Highway Department v. Barnwell Bros.*, 303 U. S. 177, 186, and authorities cited.

⁴⁰ See Warren, *Making of the Constitution*, 370 (1928).

Although there has been a diversity of opinion as to what formula most aptly drew the line between permissible and invalid state legislation and as to the application of the various formulas to the facts of particular cases, there has been substantial agreement for at least 90 years that some types of state laws were invalidated by the commerce clause itself in the absence of a showing of congressional intention. Since *Cooley v. Board of Port Wardens*, 12 How. 299, 319, the Court has consistently adhered to the principle that:

Whatever subjects of this power *are in their nature national*, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a ~~nature~~ as to require exclusive legislation by Congress. [Italics supplied.]

Some cases, though without abandoning this test, have spoken in terms of "direct" or "indirect" burdens on commerce.⁶¹ Others have emphasized the implied intention of Congress. If the subject was "national," Congress was presumed to intend that there be no state regulation without express congressional consent, while if the subject was "local" Congress was presumed to assent to the existence of state legislation until the con-

⁶¹ E. g. *Shafer v. Farmers Grain Co.*, 268 U. S. 189; *Bayside Fish Co. v. Gentry*, 297 U. S. 422; *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1; *Public Utilities Commission v. Attleboro Co.*, 273 U. S. 83.

trary appeared.⁶² Whatever the phraseology employed, we believe that in substance the Court was intending to apply the basic principle of the *Cooley* case. As the Court, speaking through Mr. Justice Hughes, declared in *The Minnesota Rate Cases*, 230 U. S. 352, 400:

The principle, which determines this classification, underlies the doctrine that the States cannot under any guise impose direct burdens upon interstate commerce. For this is but to hold that the States are not permitted directly to regulate or restrain that which from its nature should be under the control of the one authority and be free from restriction save as it is governed in the manner that the national legislature constitutionally ordains.

• See to the same effect *Minnesota v. Blasius*, 290 U. S. 1, 8; *Port Richmond Ferry Co. v. Hudson County*, 234 U. S. 317, 330.

Recent decisions applying this test, which we think is plainly the most consistent with the basic objectives of the commerce clause, have emphasized that "whatever subjects are in their nature national" are subject to exclusive federal control,

⁶² *Graves v. O'Keefe*, 306 U. S. 466, 479 n. and cases cited; *Welton v. Missouri*, 91 U. S. 275, 282; *County of Mobile v. Kimball*, 102 U. S. 691, 697; cf. *Leisy v. Hardin*, 135 U. S. 100, 124; *In re Rahrer*, 140 U. S. 545. For an exposition of this theory see Dowling, *Interstate Commerce and State Power*, 27 Va. L. Rev. 1 (1940).

while local matters, even though interstate, may be regulated by the states. Thus in *California v. Thompson*, 313 U. S. 109, 113, the Court said:

As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of *local concern* with respect to which Congress has not exercised its power, even though the regulation affects interstate commerce. Ever since *Willson v. Black Bird Creek Marsh Co.*, 2 Pet. 245, and *Cooley v. Board of Port Wardens*, 12 How. 299, it has been recognized that there are matters of *local concern*, the regulation of which unavoidably involves some regulation of interstate commerce, but which because of *their local character and their number and diversity* may never be adequately dealt with by Congress. *Because of their local character*, also, there is wide scope for local regulation without impairing the uniformity of control of the national commerce in *matters of national concern* and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause. * * * [Italics supplied.]

And the differentiation between matters of national importance and those of local concern was

reiterated at the last term in *Duckworth v. Arkansas*, 314 U. S. 390, 394, where the Court declared:

While the commerce clause has been interpreted as reserving to Congress the power to regulate interstate commerce in matters of national importance, that has never been deemed to exclude the states from regulating matters primarily of local concern with respect to which Congress has not exercised its power, even though the regulation has some effect on interstate commerce. * * * [Italics supplied.]

See to the same effect *The Minnesota Rate Cases*, 230 U. S. 352, 398-412, which contains an analysis of the doctrine and a detailed review of the earlier cases; *South Carolina Highway Department v. Barnwell Bros.*, *supra*; *Edwards v. California*, 314 U. S. 160, 172; Dowling, *Interstate Commerce and State Power*, 27 Va. L. Rev. 1 (1940); Sholley, *The Negative Implications of the Commerce Clause*, 3 Univ. of Chicago L. Rev. 556 (1936), 3 Selected Essays on Constitutional Law 933 (Assn. of American Law Schools 1938).

No mathematical rule, of course, determines what subjects of regulation are of national importance and which are of local concern. It is necessary to take into account "all the facts and circumstances, such as the nature of the regulation, its function, the character of the business

involved and the actual effect on the flow of commerce" (*Di Santo v. Pennsylvania*, 273 U. S. 34, 41 (dissent)). In general it may be said that matters which are of limited consequence in a geographic-economic sense (e. g., *Milk Control Board v. Eisenberg Farm Products Co.*, 306 U. S. 346; *Port Richmond Ferry Co. v. Hudson County*, 234 U. S. 317) and "cases where a State was exercising its historic powers over . . . traditionally local matters" (*Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749, and see p. 87, *infra*) have been deemed local. But other matters, not falling in these categories, which are likely to affect the interstate economy on a broader scale or which substantially interfere with interstate movement for a "commercial," as distinct from a "police," purpose,²⁶³ have been regarded as falling within the exclusive national sphere. E. g., *Wabash, St. L. and Pacific Ry. v. Illinois*, 118 U. S. 557; *Schollenberger v. Pennsylvania*, 171 U. S. 1; *West*

²⁶³ Although we use these terms with some hesitancy in view of the various shades of meaning which they possess, it is felt that they may appropriately be used as convenient symbols for the cases dividing subjects into state and federal fields. The term "police power" is sometimes used to describe only those regulations which relate to the public health, safety, and welfare which have historically been subject to local governmental control (e. g., *Railroad Co. v. Husen*, 95 U. S. 465, 470-471); the term also may be used more broadly to mean any legislation within the power of government (e. g., *Lienie Cases*, 5 How. 504, 583 (C. J. Taney)).

v. *Kansas Natural Gas Co.*, 221 U. S. 229; *Lemke v. Farmers Grain Co.*, 258 U. S. 50; *Pennsylvania v. West Virginia*, 262 U. S. 553; *Buck v. Kuykendall*, 267 U. S. 307; *Shafer v. Farmers Grain Co.*, 268 U. S. 189; *Sprout v. South Bend*, 277 U. S. 163; *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1.

The Court has also regarded as of great consequence whether or not the burden of a statute fell primarily upon persons outside of the regulating state. Even in the absence of open discrimination the Court has recognized that "the commerce clause by its own force" similarly prohibits (*South Carolina Highway Department v. Barnwell Bros.*, 303 U. S. 177, 185-186) "state legislation nominally of local concern [which] is in point of fact aimed at interstate commerce, or by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without the state. *Robbins v. Shelby County Taxing District*, 120 U. S. 489, 498; *Caldwell v. North Carolina*, 187 U. S. 622, 626. It was to end these practices that the commerce clause was adopted." As the Court stated in that case (pp. 184-185 n.):

State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without any corresponding advantage to those within, have been thought

to impinge upon the constitutional prohibition even though Congress has not acted. (Citing cases) * * *

Underlying the stated rule has been the thought, often expressed in judicial opinion, that when the regulation is of such a character that its burden falls principally upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state. * * *

See also *Edwards v. California*, 314 U. S. 160, 174; *McGoldrick v. Berwind-White Co.*, 309 U. S. 33, 46 n.; cf. *Helvering v. Gerhardt*, 304 U. S. 405, 412; *McCulloch v. Maryland*, 4 Wheat. 316, 435-436.

It is unnecessary in this case to look for an all-inclusive definition of those subjects which are national or local. We are of the opinion that if anything is of national commercial importance, the supply and price level of a commodity moving in interstate commerce falls in that category. The California statute and raisin program permit a state agency to monopolize the entire national supply of raisins, to determine the quantity to be shipped in interstate commerce, and to control the interstate price structure. It is expressly contemplated that the State Zone will "stabilize" the market by keeping a substantial portion of the raisin supply out of normal competitive channels, and by preventing the forces of competition from

operating upon the sale of the remainder. Such a program applied to all of a product marketed in interstate commerce is obviously of national concern. And inasmuch as 90 to 95 percent of the raisins covered by the program are sold interstate, the burden of the regulation will fall primarily upon consumers in other states. Since the benefits accrue to the California producers, the action of the state "is not likely to be subjected" to the normal "political restraints" upon legislation whose impact is felt equally by interests within the state. See pp. 79-80, *supra*. In view of these facts and the controlling principles summarized above, we believe that the California raisin program is unconstitutional.

This conclusion is confirmed by numerous decisions holding invalid state regulation of interstate prices, rates, and competition where the effect is not limited to purely local interests. The states may not regulate interstate railroad rates or wholesale gas or electric rates (*Wabash, St. L. & Pac. Ry. v. Illinois*, 118 U. S. 557; *Missouri v. Kansas Gas Co.*, 265 U. S. 298; *Public Utilities Commission v. Attleboro Co.*, 273 U. S. 83), although they may control retail rates, even when interstate, since the latter are regarded as local in character (*Pennsylvania Gas Co. v. Public Service Commission*, 252 U. S. 23; *Illinois Natural Gas Co. v. Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 505; cf. *Port Richmond Ferry Co. v. Hudson*

County, 234 U. S. 317; *Milk Control Board v. Eisenberg Farm Products Co.*, 306 U. S. 346). Although the state may fix prices for milk sold interstate in connection with a local milk-control program when only a small proportion of the commodity regulated leaves the state (*Milk Control Board v. Eisenberg*, *supra*), a state may not license or control the prices or profits of persons purchasing wheat for interstate shipment when most of the commodity is intended to cross state lines. *Lemke v. Farmers Grain Co.*, 258 U. S. 50; *Shafer v. Farmers Grain Co.*, 268 U. S. 189; *Grandin Farmers Cooperative Elevator Co. v. Langer*, 5 F. Supp. 425 (N. D.), affirmed, 292 U. S. 605.⁴⁴ Commerce is certainly no more obstructed through the requirement of a license for buyers than by direct limitation upon the supply of a commodity which may be sold.

Appellants seem to agree (Br. pp. 38, 40) that the test of the validity of a state law affecting commerce is whether the matter regulated is "peculiarly of local concern," but contend that because the raisins are all produced in California and because the transactions regulated are intrastate the program does apply only to local matters. As to the first point, it is precisely because California has a natural monopoly of the raisin

⁴⁴ The *Eisenberg* case distinguished the *Lemke* and *Shafer* cases on the ground that they dealt with commerce almost entirely interstate in nature. 306 U. S. at 353.

industry that the regulation has important national effects. When a commodity is produced in several states a single state is in no position to control the national market. In addition, competitive forces will tend to prevent a single state from imposing restrictive regulations on commerce in such a commodity. With respect to a commodity produced only in one state and marketed primarily in other states, a state is subject to neither the customary economic nor the normal internal political restraints. See pp. 79-80, *supra*. The present state program determines the quantity of raisins which may go to market—and the market is the national interstate market. We fail to see how such a regulation can be said to be of purely local concern.

Appellants lay great stress upon the point that the transactions here regulated are intrastate. We do not think that the marketing as a whole can be so described. Moreover, when a state program has so great an effect upon the movement and the price of a commodity in interstate commerce throughout the nation, we feel that it is immaterial whether or not the activities regulated are technically interstate.

Ninety to ninety-five per cent of the raisins are known to be destined for extrastate shipment (R. 16, 154-155). The packers prepare the raisins for market by stemming, cleaning, and packing them, but this preparation takes only a few minutes (R.

107, 130-131; see pp. 5-6, *supra*) and is not comparable to the conversion of raw materials into a different finished product. The raisins are stored for periods ranging from a few days to two years, but many of the smaller packers dispose of their share of the crop in a relatively short time (R. 132-133). There was testimony that (R. 132) "The small packer, with less finances, has to operate his business more or less on a merchandise basis, having the raisins delivered today and shipping them tomorrow." In the ideal situation, when the outgoing truck was available when raisins were brought to the plant, the raisins might be in the plant only five or six minutes (R. 131). The record shows that packers obtain orders from outside the state before the raisins are received from the growers (R. 129, 131-132), and ship many of the raisins promptly in order to fill such advance orders.

Since most of the crop is purchased for eventual interstate shipment, it may well be regarded as in, or in the current of, interstate commerce. In *United States v. Rook Royal Co-operative, Inc.*, 307 U. S. 533, 568-569, the Court said in answer to a similar contention:

The challenge is to the regulation "of the price to be paid upon the sale by a dairy farmer who delivers his milk to some country plant." It is urged that the sale, a local transaction, is fully completed before any interstate commerce begins and that the at-

tempt to fix the price or other elements of that incident violates the Tenth Amendment. But where commodities are bought for use beyond state lines, the sale is a part of interstate commerce. * * *

See also *Lemke v. Farmers Grain Co.*, 258 U. S. 50, in which sales by farmers to grain elevators for subsequent shipment were held to be in interstate commerce.

Even if the sales of raisins to be stored for a long period were intrastate this would not necessarily be true as to those raisins which started on their interstate journey shortly after entering the packing plant. It would, of course, be impossible to segregate for regulatory purposes the raisins shipped in commerce shortly after their receipt by the packers and those stored for a longer period. Cf. *Currin v. Wallace*, 306 U. S. 1; *Mulford v. Smith*, 307 U. S. 38; *United States v. New York Central R. R. Co.*, 272 U. S. 457.

Accordingly we do not believe that the state program can be deemed to be limited to the regulation of intrastate activities. In any event, since all of the raisins shipped in interstate commerce come from California, it makes no difference, in so far as the effect on commerce is concerned, whether the state restricts the available supply by limiting the quantity sold by the growers or that shipped by the packers. For if the growers cannot sell more than an amount permitted by the state, the supply which the packers will have

available for interstate shipment will inevitably be limited to the same extent. Similarly, any increase in the prices paid the growers as a result of the state program will increase the costs of and the prices charged by the packers. For the prices established by the State Zone function as a floor beneath which packers cannot purchase, and this floor will serve as the foundation upon which the packers must compute the prices at which they will resell the raisins in interstate commerce.

When a state law affects "commerce in its national aspect," its validity should not be dependent upon a "mechanical test" for determining when intrastate commerce ends and interstate commerce begins. Cf. *Illinois Natural Gas Co. v. Central Illinois Pub. Serv. Co.*, 314 U. S. 498. The Court's remarks in the *Illinois Gas* case are directly in point (314 U. S. 505, 506):

* * * the Court, in determining the validity of state regulations, has been less concerned to find a point in time and space where the interstate commerce in gas ends and intrastate commerce begins, and has looked to the nature of the state regulation involved, the objective of the state, and the effect of the regulation upon the national interest in the commerce. * * *

In the absence of any controlling act of Congress, we should now be faced with the question whether the interest of the state in the present regulation of the sale and

distribution of gas transported into the state, balanced against the effect of such control on the commerce in its national aspect, is a more reliable touchstone for ascertaining state power than the mechanical distinctions on which appellee relies. * * *

Cloverleaf Butter Co. v. Patterson, 315 U. S. 148, and *McDermott v. Wisconsin*, 228 U. S. 115, support the above statement that state regulation of intrastate activities which substantially interferes with the national interest in commerce is invalid. The *Cloverleaf* case noted that "the same principles govern state action in this field" of manufacturing (315 U. S. at 156); and the *McDermott* case nullified an interference with federal policy resulting from state control of labels on goods on a retailer's shelves.

The cases in which state regulations have been upheld in the main fall into categories which since the beginning of our government have been regarded as "traditionally local." *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749. Quarantine and other health measures, highway and safety laws, regulations of waterways and local public utilities, conservation and game laws, inspection laws, all relate to matters which, because of their number and diversity, cannot adequately and fully be dealt with by Congress. See *California v. Thompson*, 313 U. S. 109, 113; *South Carolina Highway*

Department v. Barnwell Bros., 303 U. S. 177, 185.⁶⁵ Ever since *Willson v. Black-bird Creek Marsh Co.*, 2 Pet. 245, and *Cooley v. Board of Port Wardens*, 12 How. 299, it has been recognized that these are matters of local concern (*ibid.*).

Many cases hold that statutes purporting to deal with these subjects cannot stand if in fact they are designed to interfere with the untrammelled flow of interstate trade from the competitive or commercial viewpoint. *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1; *Minnesota v. Barber*, 136 U. S. 313; *Brimmer v. Rebman*, 138 U. S. 78; *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229; *Railroad Co. v. Husen*, 95 U. S. 465. The limitation upon the power of states to regulate the competitive features of interstate industry is brought out by two cases involving certificates of necessity and convenience for interstate bus lines. In *Buck v. Kuykendall*, 267 U. S. 307, the Court held that a state could not deny a certificate to such a company in order to limit interstate competition. In *Bradley v. Public Utilities Commission*, 289 U. S. 92, the Court held that such a certificate could be denied in order to avoid the hazards of traffic congestion, the *Buck* case being distinguished on the ground that

⁶⁵ The citations are collected in the above cases and in *The Minnesota Rate Cases*, 230 U. S. 352, 398-412.

it did not concern safety but was intended to prevent competition deemed undesirable.

Appellants rely chiefly upon *Sligh v. Kirkwood*, 237 U. S. 52; *Champlin Refining Co. v. Corporation Commission*, 286 U. S. 210; and *Townsend v. Yeomans*, 301 U. S. 441. *Sligh v. Kirkwood* sustained a Florida law forbidding the shipment of citrus fruits which were "immature or otherwise unfit for consumption."⁶⁶ This measure was plainly an appropriate means of preventing the consumption of impure food, and accordingly fell within the class of health regulations historically left to the states (cf. *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749; *Maurer v. Hamilton*, 309 U. S. 598, 614), even though a purpose of the law was also to protect the commercial reputation of Florida fruit. A state quarantine law is nonetheless a health regulation because it prevents diseased food or persons or cattle from leaving a state in the interests of persons residing elsewhere. Moreover, the Florida law did not seek to monopolize or control the total supply and price of a subject of interstate commerce.

The *Champlin* case involved a true conservation law designed to prevent physical waste of

⁶⁶ The court below in this case did not enjoin enforcement of the California regulation insofar as it applied to "unwholesome, unsound or inferior raisins" (R. 62).

a vital product. This Court's opinion several times pointed out that the Oklahoma oil proration statute was not intended to control prices or eliminate competition (286 U. S., at 232, 234). Moreover, Oklahoma did not have a monopoly of the national supply. The California agricultural proration statute is directed at control of marketing, not conservation of a natural resource. See, pp. 31-32, *supra*. Crops which grow each year do not need to be "conserved" in the same sense as does a wasting asset such as oil, which is definitely limited in quantity.

Townsend v. Yeomans sustained a Georgia statute fixing maximum commissions for tobacco warehousemen. The Court pointed out that the subject was one permitting of diversified treatment, and that (301 U. S. at 455):

The Georgia Act does not attempt to fix the prices at the auction sales or to regulate the activities of the purchasers. The fixing of reasonable maximum charges for the services of the warehousemen in aid of the tobacco growers does not militate against any interest of those who buy. * * *

A law fixing maximum charges for services performed within a state protects the interests of extrastate purchasers and consumers. The Georgia law, of course, gave the state no control over the multi-state tobacco market.

None of these cases are concerned with a statute or program monopolizing the national mar-

ket. Indeed, we know of no case in which a state law or regulation would have had as great an effect upon the national interest in interstate commerce as does the program involved in the case at bar.

CONCLUSION

For the above reasons we conclude (1) that the California Raisin Program is not inconsistent with federal agricultural legislation; (2) that it is in conflict with the Sherman Act; and (3) that, apart from federal legislation, it is invalid under the commerce clause.

Respectfully submitted.

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OCTOBER 1942.

APPENDIX A

UNITED STATES DEPARTMENT OF AGRICULTURE

DIVISION OF MARKETING AND MARKETING AGREEMENTS

**COMPILATION OF AGRICULTURAL
MARKETING AGREEMENT
ACT OF 1937**

**REENACTING, AMENDING, AND
SUPPLEMENTING THE AGRICULTURAL
ADJUSTMENT ACT, AS AMENDED**

**(Including Amendments of the
76th Congress, 1st Session)**



**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1939**

orderly marketing conditions for agricultural commodities in interstate commerce as will establish³ prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the postwar period, August 1919-July 1929.

(2) To protect ~~the~~ interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement;

Sec. 8a(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating⁴ any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to deter-

³ The italicized words were substituted, by sec. 2 (b) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will feastablish".

⁴ The following was deleted by section 5 (c) of the Agricultural Marketing Agreement Act of 1937: "the provisions of this section, or of".

mine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.

(d) Section 8b (relating to marketing agreements);

SEC. 8b. In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the terminations of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(e) Section 8c (relating to orders);

ORDERS

SEC. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores and the products of honeybees),⁵ or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples, other than apples produced in the States of Washington, Ore-

⁵ The words "and the products of honeybees" were inserted by public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

gon, and Idaho,* and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans, hops,⁷ honeybees,⁸ and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS—MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(1) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the

*The words "other than apples produced in the States of Washington, Oregon, and Idaho," were added by Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.

⁷The word "hops" was inserted by and the following provision was contained in Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938:

"SEC. 3. No order issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops except during the two crop years next succeeding the date of enactment of this Act."

The provision quoted was amended by Public, No. 91, 76th Congress, Chapter 150, 1st session, approved May 26, 1939, to read as follows:

"SEC. 3. No orders issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops after September 1, 1942."

⁸The word "honeybees," was inserted by Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

case of orders covering milk products only, such provision is approved or favored by at least three-fourth of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their *marketings** of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making

* The word "production" was deleted and the word "marketings" was substituted by section 2 (d) of the Agricultural Marketing Agreement Act of 1937.

collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(6) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

TERMS—OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples, *other than apples produced in the States of Washington, Oregon, and Idaho*,¹⁰ and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, *hops*,¹¹ *honey-bees*,¹² and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)), no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts¹³ sold by such producers in such prior period as the Secretary determines to be representative, or upon the current *quantities available for sale by*¹⁴ such producers, or both, to the end that the total quantity thereof to be purchased, or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets

¹⁰ Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.

¹¹ Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938.

¹² Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

¹³ The words "produced or" were deleted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937.

¹⁴ The italicized words were substituted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "production or sales of".

in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their power and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating

to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional pro-

duction areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than \$50 or more than \$500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States, or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have,

during such representative period, produced for market more than 50 per centum of the volume of such commodity, produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Milk Prices

(18) *The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 2 and section 8e, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 2 and section 8e shall, for the purposes of such agreement, order, or amendment, be such level as will reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand, for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined pursuant to section 2 and section 8e are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.*¹²

¹² This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement Act of 1937.

PRODUCER REFERENDUM

(19) For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12).¹⁰

(f) Section 8d (relating to books and records);

BOOKS AND RECORDS

SEC. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, to furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title; and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a num-

¹⁰ This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement act of 1937.

ber of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(g) Section 8e (relating to determination of base period);

DETERMINATION OF BASE PERIOD

SEC. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919-July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

(h) Section 10 (a), (b) (2), (c), (f), (g), (h), and (i) (miscellaneous provisions):

MISCELLANEOUS

SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: Provided, That no salary in excess of \$10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) (2)¹⁷ Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority

¹⁷ Sec. 10 (b) (2) of the Agricultural Adjustment Act, as amended.

or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title.¹⁸ Any violation of any regulation shall be subject to such penalty, not in excess of \$100, as may be provided therein.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.¹⁹

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any

¹⁸ Sec. 2 (g) of the Agricultural Marketing Agreement Act of 1937 deletes the following: "including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto".

¹⁹ Sec. 2 (h) of the Agricultural Marketing Agreement Act of 1937 deletes the sentence: "The President is authorized to attach by Executive order any or all such possessions to any internal-revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes".

person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture; Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

(j) *The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in no wise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein, the word "State" includes*

*Territory, the District of Columbia, possession of the United States, and foreign nations.*²⁰

(i) Section 12 (a) and (c) (relating to appropriation and expense);

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions²¹ with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the market for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000; Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and book of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

(j) Section 14 (relating to separability);

SEPARABILITY OF PROVISIONS

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

(k) Section 22 (relating to imports);

IMPORTS

SEC. 22 (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend

²⁰ This italicized subsection was added by sec. 2 (i) of the Agricultural Marketing Agreement Act of 1937.

²¹ Sec. 2 (j) of the Agricultural Marketing Agreement Act of 1937 deletes the words: "and production adjustments".

to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title, or the Soil Conservation and Domestic Allotment Act, as amended, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title or the Soil Conservation and Domestic Allotment Act, as amended: Provided, That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exists, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.²²

Sec. 2. The following provisions, reenacted in section 1 of this act, are amended as follows: ²³

Sec. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated

²² Sec. 5 of Public No. 461, 74th Cong., approved February 29, 1936, amended sec. 22 of the Agricultural Adjustment Act, as amended, by inserting after the words "this title," wherever they appeared, the words "or the Soil Conservation and Domestic Allotment Act, as amended"; and by deleting the words "an adjustment" whenever they appeared, and inserting in lieu thereof the word "any."

²³ Subsections (a) to (j) inclusive, of section 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text and in the footnotes.

by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this act), milk or its products, may mediate and, with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bona fide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended; relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States.

Sec. 4. Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

Sec. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this act) to the provisions of the Agricultural Adjustment Act, this act, and other provisions of law to which they have been heretofore made applicable.

Sec. 6. This act may be cited as the "Agricultural Marketing Agreement Act of 1937."

STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE
SACRAMENTO

AGRICULTURAL PRORATE ACT



REVISED TO SEPTEMBER 13, 1941



AGRICULTURAL PRORATE ACT*

An act to conserve the agricultural wealth of the State of California; and to prevent economic waste in the marketing of agricultural products or crops produced in the State of California, creating an Agricultural Prorate Advisory Commission; providing for the appointment of members of said commission, fixing the term of office of the members of said commission; prescribing the powers, duties and authority of the Director of Agriculture under this act and of said commission and the members thereof; providing for the institution of proration programs with respect to agricultural products or crops; providing for the enforcement of such programs; providing penalties for violation of such programs; providing for the creation of funds for the purposes of said act and providing for the collection thereof; and making an appropriation therefor.

(Title amended by Ch. 894, Stats. 1939.)

(* The original act is Chapter 754, Statutes of 1933, approved June 5, 1933. It was amended by Chapter 471, Statutes of 1935, approved July 15, 1935, and Chapter 743, Statutes of 1935, approved July 20, 1935. It was further amended by Chapter 6, Extra Session, 1938, approved March 22, 1938. Also amended by Chaps. 894, 363, and 548, Stats. 1939 and by Chaps. 603, 1150 and 1186, Stats. 1941.)

The people of the State of California do enact as follows:

SECTION 1. The unreasonable waste of agricultural wealth occasioned by the harvesting, preparation for market and delivery to market of greater quantities of agricultural commodities than are reasonably necessary to supply the demands of the market is opposed to the public interest and the difficulty inherent in any attempt by individuals to correlate within a reasonable degree the supply of any agricultural commodity to current consumptive demands is creating chaotic economic conditions in certain agricultural areas of the State of such severity as to imperil the ability of agricultural producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase and increasing the tax burdens of other citizens for the same purposes. In the interest of the public welfare and general prosperity of the State, the unnecessary and unreasonable waste of agricultural wealth, hereinafter referred to as "agricultural waste," involved in the harvesting or preparation for and delivery to market of agricultural commodities for which there exists only a limited consumer demand should be eliminated while at the same time preserving to all agricultural producers an equality of opportunity in the available markets.

Preamble
and
purposes

(Amended by Ch. 471, Stats. 1935.)

SEC. 2. As used in this act:

(a) The term "person" includes any individual, firm, association or corporation.

Definitions

(b) The term "agricultural waste," in addition to its ordinary meaning, shall include economic waste, and waste incident to the harvesting and/or preparation for any delivery to market of agricultural commodities in excess of reasonable market demands.

(c) The terms "product," "crop" or "commodity" mean any horticultural, viticultural, or vegetable product of the soil, live stock and live stock products and poultry and poultry products, but shall not include milk or milk products.

(d) The terms "proration zone" or "zone" mean any district or districts with respect to which a program of market proration is proposed to be or has been instituted.

(e) The term "commission" means the Agricultural Prorate Advisory Commission unless otherwise indicated by the context.

(f) The term "producer" means any person engaged in the business of growing or producing any agricultural product for commercial use to the extent of at least one producing factor as hereinafter defined.

(g) The term "distributor" means any person, other than a retailer, who acquires and distributes any product at wholesale or retail.

(h) The term "retailer" means any person engaged in the business of making sales exclusively at retail.

(i) The term "handler" means any person receiving agricultural commodities from the producer for the purpose of marketing the same.

(j) The phrase "primary channel of trade" shall mean that transaction in which the producer or his cooperative marketing association loses physical possession of the commodity through the sale thereof or other disposition commercially.

(k) The term "producing factor" means the unit of one acre in commercial production, or such other unit as the commission shall specify, in the event that it finds that more than one acre or a fractional part of an acre, or some other unit of commercial production, is required to assure reasonable control of the commodity. In the case of a proration marketing program for live stock or live stock products or for poultry or poultry products, the producing factor shall be specified in the proration marketing program.

(l) The term "owner" means the producer in possession of agricultural commodities and legally entitled to dispose of the same for marketing purposes.

(m) The term "proration" means the uniform percentage of their total production which all producers may harvest and prepare for market and/or market during specified proration periods.

(n) The term "dealer" means any distributor or retailer.

(o) The term "processor" means any person who buys, or otherwise takes title to or possession of, farm products for

the purpose of processing or manufacturing the same or selling, reselling or redelivering the same in dried, canned, extracted, fermented, distilled, or other preserved form, and shall include (1) any person or exchange conducting such business and (2) any person or exchange buying farm products from the producer thereof for the purpose of reselling them to any person or exchange conducting such business.

(p) The term "production" means the total crop of an agricultural commodity of a producer as defined in this section.

(q) The term "director" means the Director of Agriculture of the State of California, and, unless the context otherwise requires, includes any authorized agent of the director.

(r) The singular includes the plural.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938, approved March 29, 1938, and in effect immediately; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 3. The Agricultural Prorate Commission is hereby abolished. The Agricultural Prorate Advisory Commission, consisting of nine members is hereby created. Eight of the members shall be appointed by the Governor in the manner and for the terms hereinafter set forth. The Director of Agriculture shall be ex officio the ninth member. Six of the appointive members of said commission shall be engaged at the time of their appointment in the production of agricultural commodities as their principal occupation, but no two of these shall be appointed as representing the same commodity. One of said appointive members shall be neither a producer nor a handler of agricultural commodities but shall be appointed to represent consumers generally. One appointive member shall be an experienced commercial handler of agricultural products. The terms of office of the members except the director shall be four years and they shall hold office until the appointment and qualification of their successors, except that the terms of office of the said members first appointed shall be fixed by the Governor so that the terms shall expire as follows: Two members, January 1, 1940, two members, January 1, 1941, two members, January 1, 1942, and two members, January 1, 1943.

Advisory
Commission

The members who have been serving as members of the Agricultural Prorate Commission shall serve as members of the Agricultural Prorate Advisory Commission until the appointment of all of the members of the Agricultural Prorate Advisory Commission as provided in this section. Vacancies shall be filled by appointment for the unexpired term.

All such appointments shall be by and with the consent of the Senate, but shall be valid to all intents and purposes, subject, however, to the consent of the Senate at its next regular session, and until such time, the person so appointed shall have as full and ample authority as though confirmed by the Senate. In case the Senate, during its session, fails to act or

refuses its consent to any such appointment, the Governor may, after adjournment of the Senate, appoint some other person, which appointment shall be valid to all intents and purposes, subject, however, to the consent of the Senate at its next regular session, and until such time, the person or persons so appointed shall have as full authority and power as though confirmed by the Senate.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Organization
of com-
mission

SEC. 4. Within 30 days after notice of his appointment each member shall qualify by taking the oath of office and filing the same with the Secretary of State in accordance with law. Within five days after all of said members shall have qualified, they shall organize and elect a president from among their number. The commission shall adopt the general policies as to its activities under this act and may from time to time adopt such rules and regulations as it deems necessary in connection therewith. The director, with the consent of the commission, shall appoint a secretary for the commission, which secretary shall also serve as executive assistant to the director in the administration of the provisions of this act.

The director may appoint an attorney and shall provide for such other personnel as may be necessary and shall prescribe their duties. In carrying out his duties under this act, the director is hereby authorized to utilize the facilities and personnel of the State and county departments of agriculture. The members of said commission shall receive ten dollars (\$10) per day for each day they are actually engaged on official business and shall be reimbursed for their actual traveling expenses.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Office of
commission

SEC. 5. The office of the commission shall be in the City of Sacramento and it may meet at such times and in such places as may be expedient and necessary for the proper performance of its duties; provided, however, said commission shall meet at least once every 90 days and the failure of any member to attend three consecutive meetings shall be just cause for his removal from said commission. No member or employee of the commission or member of the program committee or the zone agent shall unduly influence producers in their choice either for or against the institution of an agricultural pro-rated marketing program or for or against the termination of such a program. At all meetings of the commission a majority of the commission shall constitute a quorum.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Rules and
regulations

SEC. 6. For the purpose of administering and enforcing the provisions of this act, the director is authorized to adopt such necessary rules and regulations as he may from time to time deem advisable and shall conduct any hearing, inquiry or investigation which the director has power to undertake.

or hold. In the conduct of any such hearing, inquiry or investigation the director shall have power to administer oaths, and issue subpoenas for the attendance of witnesses and the production of papers, books, maps, accounts, documents and testimony in any inquiry, investigation or hearing ordered or undertaken in any part of the State.

The director may conduct hearings and investigations on behalf of the commission and in that capacity shall have all of the authority granted him in the preceding paragraph.

At each hearing held in accordance with the provisions of this act at least one member of the commission must be present. The superior court of the county or city and county in which any such inquiry, investigation or hearing may be held shall have power to compel the attendance of witnesses and to require the disclosure by such witnesses of all facts known to them, relative to the matters under investigation, and the production of papers, maps, books, accounts, documents and testimony as required by any subpoenas issued by the director. All parties disobeying the orders or subpoenas issued under the authority of the director shall be guilty of contempt and shall be certified to the superior court of the county in which said contempt occurs, which court shall punish such contempt.

Advisory
Commission
hearings

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 7. A full and accurate record of business or acts performed or of testimony taken in pursuance of the provisions of this act shall be kept and be placed on file in the office of the director, which records shall at all times be open to any interested person.

Records

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 8. An agricultural prorated marketing program may be instituted for a variety or kind of agricultural commodity and may be based either upon a production zone or upon a market zone, the basis to be specified in the petition therefor.

Establish-
ment of pro-
ration zone

Ten or more producers of the variety or kind of the commodity proposed to be affected may file with the commission a petition for the establishment of a proration zone and such prorated marketing program.

The commission within its discretion may decline to initiate or act upon any such petition if it determines and is satisfied that said petition has not been presented within a time reasonably in advance of the harvesting of the crop or commodity sought to be prorated so as to permit the formulation and establishment of a sound and effective program and which will effectuate the purposes of this act.

• The said petition shall, among other things, contain:

(1) A description of the district or districts comprising the zone upon which the proposed marketing program is to be based.

(2) A general statement of facts showing the necessity for the institution of a prorated marketing program.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session, 1938; Ch. 894, Stats. 1939.)

Canning figs
exempted

SEC. 8.1. By reason of the climatic and other conditions relating to the production and marketing of figs for canning purposes no proration program under this act shall be established for figs for canning purposes. Any such program now in existence shall be forthwith terminated and no further proceedings shall be had thereunder except proceedings relating to such termination.

(Added by Ch. 894, Stats. 1939.)

Grapes in
certain
counties
exempted.

SEC. 8.5. By reason of the climatic conditions and other factors relating to the production of grapes therein no proration program shall be applicable as to grapes in Sonoma, Napa, Mendocino, Lake, Santa Clara, Santa Cruz, Alameda, San Benito, Solano, San Luis Obispo, Contra Costa, Monterey, and Marin counties, or any of them.

The provisions of this section shall not affect the validity of the organization or existence of any proration zone or any proration program applicable to grapes except as to the counties herein named.

(Added by Ch. 363, Stats. 1939.)

Hearings
upon peti-
tion for zone

SEC. 9. Upon the receipt of a petition for the establishment of a prorate program, the director, on behalf of the commission, shall hold a hearing at some central point located within the area described in said petition and proposed to be established as a proration zone.

If the director so requires, there shall be filed with the petition a good and sufficient undertaking, approved by the director to cover the probable cost of conducting the hearing and instituting the prorated marketing program.

Notice of such hearing shall be given at least ten (10) days prior thereto by publication in a newspaper of general circulation printed and published in each county affected and by posting in at least ten (10) conspicuous places in said area. If no paper is published in such area, then said notice shall be published in such paper as is published in the county or has general circulation in such area. In case the proposed proration zone includes more than one area the required notice shall be given in each area and the director shall hold hearings in each. At said hearings the director shall receive and hear the evidence offered by the petitioners in support of the petition and by any interested person in support of or in opposition thereto. All testimony at such hearings shall be under oath.

All evidence and exhibits and all facts and data used directly or indirectly by the director, or introduced at a hearing, shall within a reasonable time after being so used

or so introduced be available at the office of the commission to all interested parties.

Said hearings may be adjourned from time to time and from place to place as the circumstances may require. For the purpose of procuring additional evidence, facts, and data, petitioners or opponents shall, upon proper motion, be granted a continuation of any hearing by the director for a period not exceeding five days. A transcript of the proceedings at all such hearings shall be made by the director and shall be open to inspection by any interested party.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Sec. 10. If from the evidence and data developed at said hearings it shall be found by the commission that the following facts actually exist:

Economic
findings by
commission

(1) That the petition is signed in person or by authorized representatives by the required number of producers; and

(2) That the economic stability of the agricultural industry concerned is being imperiled by market conditions prevailing or liable to prevail as to the variety or kind of commodity sought to be prorated or is being imperiled by the existence or imminence of a seasonal or annual surplus; and

(3) That agricultural waste is occurring or is about to occur; and

(4) That the institution of a program of prorated marketing will conserve the agricultural wealth of the State and will prevent threatened economic waste; and

(5) That the institution of a proration program will advance the public welfare without discrimination against any producer; and

(6) That the institution and operation of a proration program will not result in unreasonable profits to the producers and that the commodity named in the petition can not be marketed at a reasonable profit to producers otherwise than by means of such a program; and

(7) That the proposed zone of proration includes all of the territory within this State reasonably necessary to carry out the purposes and attain the objectives of this act;

Then, in that event, the commission shall make written findings to that effect.

If in the case of any petition it shall appear that the inclusion of territory additional to that described in the petition is necessary to the program, the director shall postpone further proceedings until notice shall have been given to the producers within such additional territory in the manner provided for in Section 9 hereof. Thereafter said petition may be amended to include such additional territory and the director may complete said hearing in the manner hereinbefore provided.

All evidence and data developed at any hearings held pursuant to this act shall be for the consideration of the commission. The commission shall review the evidence and data developed as a result of the hearings and shall make written findings and shall grant or deny the petition in accordance with the facts so presented.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Producer
lists

SEC. 11. If the commission finds in favor of the petition: the director shall require the county agricultural commissioner of each county in which any part of the proposed zone lies to prepare a list of the producers of the commodity in that part of the zone lying in his county, together with the producing factors represented by each of such producers. Each such county agricultural commissioner shall within twenty (20) days prepare such list which shall show the names and addresses of the producers and the producing factors belonging to or controlled by each producer, and upon its completion shall transmit such list to the commission and also shall thereupon post a copy of said list in his office for examination by all interested parties.

The director may require lists of producers within the proposed proration zone from distributors or handlers of the variety or kind of commodity for which a proration program is proposed and from such other source as may be deemed necessary or advisable and may correct the commissioner's list or lists therefrom after comparison.

The director shall notify all producers in each proration zone whose names appear on such lists that an agricultural prorate program is proposed for the commodity to be affected and that the producer is credited with the number of producing factors established by said lists.

Such lists or corrected lists shall be available for inspection in the office of the director to any producer directly affected by the program.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 12. (Repealed by Chapter 894, Statutes 1939.)

SEC. 13. (Repealed by Chapter 894, Statutes 1939.)

Corrections
of voting
lists

SEC. 14. Any producer whose name does not appear on the proper list and any producer claiming an erroneous allotment of producing factors may make application to the agricultural commissioner to be placed on said list, or to be credited with the proper number of producing factors, as the case may be, and upon substantiating his claim, is entitled to have the error corrected. Such application must be made to the agricultural commissioner within 15 days after the lists of names herein described and provided are posted in the office of the agricultural commissioner of the county as

provided in Section 11 hereof. In the event that any such producer shall be dissatisfied with the final action of the agricultural commissioner in that regard, he may, within ten (10) days after notice of such final action by the agricultural commissioner, appeal to the director, whose findings shall be final.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 15. After the approval of the petition by the commission, the director shall divide the proposed zone into as many districts not exceeding seven as may appear convenient or necessary, and allot to each district the number of producers therefrom who may serve upon a program committee. The director shall thereupon call a meeting of producers in each district at which the producers shall elect persons eligible to serve upon a program committee. Such election shall be by secret ballot after nomination from the floor. Not less than three eligible persons shall be elected for each producer member of the program committee allotted to the district. At such election each producer in attendance shall be entitled to one vote, and voting by proxy shall not be permitted. All eligible persons elected in each district shall be producers within said district. In the event a corporation or a partnership is a producer, it may designate a representative who may be a nominee. From the eligible lists of producers elected in such districts, the director shall, subject to the approval of the commission, select and appoint not less than five and not more than seven members to serve on the program committee. For each member the director shall appoint an alternate. Each district in the zone or area shall be entitled to at least one member and one alternate member on said committee. The director may also, if requested by the program committee and approved by the commission, appoint on said committee in addition to the producer members, not more than two handler members and corresponding alternates who are handlers of the commodity affected by the proration program in the proposed zone.

Election of
program
committee
members

The persons so appointed by the director as the program committee shall formulate a proration marketing program which shall be submitted to the commission. The commission after a hearing or hearings on the proposed program held within the zone shall make written findings as to whether the program is reasonably calculated to carry out the objectives of this act and based upon said findings shall approve or disapprove the program, or may modify it and approve it as modified. If the producing factor is to be determined by the commission such determination shall be made and shall become a part of the program. The commission shall fix a date prior to which the program, in order to become effective, must be consented to by producers as provided in this act.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Assent of
producers

SEC. 16. If the program is approved by the commission, the director shall submit a copy of the program in full together with an explanation of the provisions of such program and the reasons therefor to each of the producers of the commodity or their duly authorized agent to be affected within the proposed zone as shown by the lists of producers compiled in accordance with the provisions of this act, accompanied by a printed, typewritten or mimeographed form upon which the producer can record his assent to the program and by a notice of the date prior to which the written assent of the producer to the program must be delivered to the office

Assent of
cooperative
association

of the director at Sacramento. A nonprofit cooperative association may assent on behalf of any of its members only if authorized so to do by an instrument in writing signed by the member; provided, that such authority may be revoked as to him by any such member by an instrument in writing filed with the director and with such association, which revocation shall become effective three (3) days after its receipt by the director. A copy of any written authorization of a producer to the nonprofit cooperative association of which he is a member shall be forwarded to the director by the association and likewise a copy of any revocation of such authority. No person, firm, or corporation, other than a nonprofit cooperative association, shall be permitted to consent for a number of producers in excess of thirty per cent (30%) of the producers to be affected, regardless of the manner in which the authority to consent is shown. On or after the date fixed, the director shall canvass the results and if he finds that 65 per cent or more of the producers in the proposed zone and the owners of 51 per cent or more of the producing factors have assented in writing to the proposed program, the director shall declare the program instituted. In any order instituting a proration program the zone affected shall be given some title indicative of the commodity affected.

Percentage
required

Each such zone shall constitute a separate public corporate entity and its affairs shall be managed by a program committee appointed as herein provided.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Review of
orders within
30 days

SEC. 17. Any order of the director instituting a proration program and any other order of the commission or director substantially affecting the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action must be commenced within 30 days after the effective date of the order complained of.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Term of
office

SEC. 18. In the event of the institution of a marketing program in a proration zone, the committee chosen under Section 15 shall be the proration program committee. The members of said committee shall serve for two years. The marketing program may, however, fix the date upon which

the two-year term of program committee members will terminate. The members of such program committee shall be entitled to compensation at the rate of ten dollars (\$10) each for each day while engaged on official business; provided, that such compensation shall not be paid for more than five days in any month unless approved by the director, and members shall be reimbursed for their necessary traveling expenses. Per diem

The director shall appoint in the same manner as the program committee was appointed an alternate for each member of the committee. It shall be the duty of such alternate to sit as a regular member of the committee in case the member for whom he is an alternate fails for any reason to attend any meeting of the committee, and he shall be compensated and reimbursed for his necessary traveling expenses in the same manner and to the same extent as a regular member when so serving. Alternate

Vacancies on the program committee occasioned by the expiration of term, death, or resignation of any member, or by removal for incompetence or inattention or neglect of duties as a member of the program committee by the director, with the approval of the commission, or by a member ceasing to qualify as a producer or handler of the commodity concerned, shall be filled in the same manner as the original appointments were made. Vacancies

The program committee shall appoint an agent, subject to the approval of the director, who shall administer the proration program under the direction of the program committee and who may be removed from office in the same manner as he was appointed. The salary or compensation of such agent shall be fixed by the program committee subject to the approval of the director. Zone agent

Such agent shall appoint such deputy agents and other assistants as may be necessary to direct the program, which appointments shall be subject to the approval of the program committee. Such agents, deputy agents and other assistants are employees of the zone and not of the State of California. No officer or employee shall receive compensation based on a percentage of volume involved in a prorate program, or in any manner that would lend encouragement to the promotion of a proration program for the purpose of increasing salaries and income. Employees

(Amended by Chs. 471 and 743, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Sec. 18.1. The marketing program to be made effective in any proration zone shall be so formulated as to rectify as far as possible the adverse marketing conditions specified in Section 10 hereof, and to maintain market stability under the limitations of this act. Such marketing program after being in effect may be altered or modified in minor particulars from time to time by such program committee with the approval Procedure
minor
amendments

Procedure
major
amendments

Negative
referendum

of the commission; provided, that the commission may require the director to hold a hearing in the zone prior to such approval. If any alteration or modification is proposed by the program committee altering the program then in effect, by the addition of any one or more of the particulars (a), (b), (c), (d), or (e) of Section 19.1 hereof, the commission shall not approve such alteration or modification unless a public hearing is held thereon. Following the public hearing a referendum shall be conducted by sending a mail ballot to all producers or their duly authorized agent as shown on the lists of producers of the commodity affected compiled in accordance with the provisions of this act and such alteration or modification shall not become effective if 40 per cent or more of said producers vote against such proposed alteration or modification. Before approving any alteration or modification of any marketing program, the commission must find that the same is reasonably calculated to carry out the purposes and attain the objectives of this act.

(Added by Ch. 471, Stats. 1935; amended by Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Powers of
program
committee

SEC. 19. Under the authority of a marketing program approved as provided in this act, a program committee shall determine the method, manner and extent of proration and the movement of the prorated commodity from harvest into a primary channel of distribution. Proration may be periodic or seasonal in character and may be based upon actual production, whether in storage or otherwise, or upon estimated production. Any estimation of production shall be subject to revision by the program committee in accordance with crop conditions. In estimating production a program committee shall give consideration, among other factors, to the normal production of the various producing units. The program committee shall be empowered:

(a) To appoint and empower subcommittees in the separated producing areas within the zone to facilitate the carrying out of the purposes of this act.

(b) To collaborate and cooperate with agencies or organizations with similar purposes, whether of this State, other States or of the United States, in the formulation and execution of a common marketing program; provided, that in proper cases the commission may require such collaboration and cooperation.

(c) To minimize an existing surplus by cooperating with the proper agencies in the enforcement of applicable existing standardization or other laws of this State, and of the United States, enacted to protect the consuming public from fraud or deception.

(d) To make contracts and agreements in the name of the zone in the furtherance of any of the powers of the program committee.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 19.1. The program committee for the purpose of minimizing the effect of surpluses or other adverse market conditions may be empowered in any program in any one or more of the following particulars:

Authorized
types of
regulation

(a) To establish and maintain surplus, stabilization or diversion pools. The program committee shall be authorized to receive from each producer for delivery into a surplus pool or stabilization pool the uncertificated portions of the marketable supply of the agricultural commodity covered by a marketing program and market the same by grades or sizes for the account of such producers when it can be advantageously disposed of either in its original or converted state. The program committee shall designate the quantity or the percentage of the marketable supply of such commodity that shall be placed in the stabilization pool and the quantity or the percentage of the marketable supply of such commodity that shall be placed in the surplus pool. The program committee shall be authorized to receive from each producer for delivery into a diversion pool such quantity or percentage of the production, of each producer, which fails to qualify for marketing or sale under grade, quality or size regulations established in the marketing program or under standardization laws or other laws of this State or of the United States. In operating any such stabilization, surplus or diversion pool, the program committee may fix grading, packing and servicing charges to be assessed against such commodities received into such pools and requiring such handling. The program committee shall have title to all of the commodity in each of such pools and shall handle all of such commodity received into each of such pools and account for the same to each producer who is beneficially interested therein upon a pooled basis.

Pools

Grading and
packing
charges

(1) In the case of surplus pools, the contents of any such pool shall not be marketed in any form which would directly compete with that part of the crop which is regularly certificated or which is in a stabilization pool. However, any part of any such surplus pool may be turned over by a program committee to charitable organizations, self-help cooperatives, and similar agencies under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade.

(2) In the case of any stabilization pool, the contents thereof may be disposed of or may be marketed from time to time as the program committee deems advisable, and consistent with the maintenance of stabilized marketing conditions.

(3) In the case of any diversion pool, the contents thereof shall be disposed of for by-products or for other diversion purposes under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade.

Diversion of
surplus

(b) To create, establish or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market and disposal of such surplus in such manner as to maintain stability in the markets and to dispose of such surplus or the contents of established pools and/or any of their derived products.

Equalization
fund

(c) To create, maintain and disburse an equalization fund to be used for the removal of any inequalities between producers as to the total volume marketed through prorated channels resulting from errors in estimating production or surplus or for indemnifying producers whose production, in whole or in part, is diverted in green form or otherwise from normal marketing outlets or diverted to relief, by-products, or other noncompetitive purposes pursuant to a marketing program.

Volume,
grade and
size
regulation

(d) To establish, adopt and apply methods for correlating the marketable supply of any commodity to the reasonable market demands therefor by means of volume limitation, time limitation, diversion, or by grade, quality or size regulations applicable to the total production of any commodity, or to that portion of any commodity which qualifies for marketing pursuant to standards authorized in the marketing program or standardization laws or other laws of this State, or of the United States.

Advertising
or trade
stimulation

(e) To broaden distribution and increase consuming outlets by appropriate educational and trade stimulation efforts of a general industry nature and not unfairly depreciative of the quality of any other food product.

The cost of the exercise of such powers as are herein granted to the program committee shall be a part of the cost of the operation of the program and shall be obtained through fees in the same manner as other costs of the program; provided, that no part of any funds raised for equalization fund purposes specified in subsection (c) of this section shall be applied to the cost of maintenance of the commission and the Department of Agriculture.

Liability of
members

No member or alternate member of any program committee nor any employee thereof, shall be held liable individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member or employee, except for acts of dishonesty.

Tree and time
removal

(f) For the purpose of providing for the adjustment of production of any agricultural commodity by means of tree or vine pulling, the program committee may receive applications from growers for acreage adjustment payments. The program committee shall, upon proper review and certification, make such acreage adjustment payments on an equitable basis from funds collected for such purpose on a uniform basis from all commercial growers of such agricultural commodity in this State, or from funds received from Federal, State or other agencies for such purpose.

No program of production adjustment adopted hereunder shall authorize payments for the removal of acreages of trees or vines of the species, variety or varieties specified in the program which have, during the three years immediately preceding the date of application, produced an annual yield per acre in excess of the comparably computed average yield from bearing trees or vines of the same species, variety or varieties for the State as a whole, such yields and averages to be determined by the director from statistical data compiled by State or Federal agencies or such other data as the director deems to be representative and reliable.

(Added by Ch. 471, Stats. 1935; amended by Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 20. After any marketing program has been formulated and has been approved as provided in this act, the agent for the zone shall assume the administration of the program and any subsequent modification thereof and the issuance of proration certificates thereunder. Such certificates shall be divided into primary and secondary certificates. Each producer shall be entitled to one primary certificate which may indicate the quantities of the commodity, for which the program has been instituted which the producer named in such certificate shall be entitled to harvest or otherwise prepare for market and delivery into the primary channels of trade. Said primary certificates may also indicate from time to time the number of secondary certificates theretofore issued under it. Secondary certificates shall be numbered consecutively and shall be used to control the time and volume of harvesting or other preparation for disposal. Such secondary certificates shall accompany all deliveries of the prorated commodity by producers into a primary trade channel; provided, that in the case of commodities which are normally concentrated for preparation for market, the program committee may authorize harvesting of the entire crop for the purpose of delivery to a concentration point and subsequent marketing control. Such certificates shall not be negotiable between producers except with the approval of the program committee and the director.

Primary and
secondary
certificates
o

In the operation of any program, cooperative and other market agencies entitled to the possession of agricultural commodities for marketing purposes may be authorized in writing by the program committee to receive certificates for producers represented by them and to represent their respective producers when proration is applied to the commodity while in the possession of such agencies.

(Amended by Ch. 471, Stats. 1935; Chs. 548 and 894, Stats. 1939.)

SEC. 21. The zone agent for each marketing program shall collect, either for each primary certificate or for each secondary certificate or for both such kinds of certificates issued

Collection
of fees

Proportion
of fees
payable to
commission

to producers, a reasonable and proportional fee to be fixed by the program committee, subject to the approval of the director, so calculated as to provide an amount adequate to defray the necessary expenses of instituting and carrying out such marketing program and a proper proportion of the cost of the maintenance of the commission and of the Department of Agriculture in the performance of duties required by this act. The proportion of the fees payable to the commission and to the Department of Agriculture may vary upon a seasonal basis for each program according to the estimated expense to be incurred by the director and the commission in administering such program; provided, that the amount so required shall not exceed fifteen per cent (15%) of the certificate fees collected by the zone agent specifically for administrative purposes and in addition such proportion of fees collected for any trade stimulation or sales promotion program as may be required by the commission and the director to administer such program which shall in no event exceed five per cent (5%) of the fees collected for such purpose, unless the payment of a larger proportion of such funds is approved by the program committee for such marketing program.

Upon request of any program committee of any marketing program, the commission shall confer with said committee or its representatives prior to fixing the amount or proportion of any fees of said marketing program payable to the Department of Agriculture for maintenance of the commission and the department in the performance of the duties required by this act.

Deposit and
expenditure
of funds

All such fees shall be deposited promptly by the zone agent in a bank or banks approved by the Director of Finance, and shall be accounted for forthwith to the Director of Agriculture. Such deposit shall be made in the name of the zone under which such funds are collected and shall be disbursed by the director, pursuant to rules and regulations prescribed by the director, and approved by the commission, only for the expenditures incurred by the program committee in carrying out the specific purposes and provisions of such marketing program, including all necessary expenses incurred in the formulation, administration and enforcement of such marketing program.

The proportionate amount of fees payable, as determined herein, to the Department of Agriculture shall be withdrawn from such funds monthly by the director and paid into the Department of Agriculture Fund in the State Treasury and shall be used only for the support of the commission and of the Department of Agriculture in carrying out their duties as required by this act.

At the end of any marketing season as designated in each marketing program, after proper provision has been made for the payment of all necessary expenses incurred in connection therewith, any funds remaining to the credit of the program

committee shall be refunded upon a pro rata basis to all persons from whom such funds were collected; provided, that, if the program continues in effect, such refund may be deferred for a period not to exceed six months from the date of the close of the next preceding marketing season so as to permit the program committee to use such residual funds to meet operating expenses in such succeeding season until sufficient funds have been collected to enable such committee to make such refund and to defray current operating expenses. At the time such refund is made, the program committee shall file with the director a claim for such refund to growers entitled thereto; provided, however, that, if the director finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the director may authorize the retention of such funds to the credit of the program committee for subsequent use in carrying out such marketing program; provided further, that on or after the effective date of this act the director may authorize the transfer of any balances remaining from previous seasons to the fund available for the then current season and any balances so transferred shall be used for carrying out the marketing program in such current season or the next succeeding season.

Refunds to
growers

No agent or employee of the program committee shall have or receive any funds collected pursuant to the provisions of this act until such agent or employee has filed with the director a bond in such form and in such penal sum as the director may prescribe.

(Amended by Ch. 743, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 22. The director shall have power to establish such rules and regulations consistent with this act as may be necessary to carry out the purposes and attain the objectives thereof.

Powers of
director

The exercise of the powers granted to a program committee in its administration of a proration program made effective in accordance with the provisions of this act shall be subject to the approval of the director; provided, that if the director finds that the exercise of such powers conforms with the provisions of the program and this act he shall approve such exercise.

The director through his duly authorized representatives and agents, including any zone agent in charge of a proration program, shall have access, solely for the purposes of investigating possible violations of any program, to the records of producers, dealers, distributors, public and private property transportation agencies, and handlers of a commodity as to which a proration program has been instituted, and shall have at all times free and unimpeded access to all buildings, yards, warehouses, stores and transportation facilities and other places in which any commodity under a proration program is

kept, stored, handled or transported. All information obtained shall be confidential and shall not be disclosed except when required in a judicial proceeding.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Act
prohibited

SEC. 22.5. It shall be a misdemeanor for:

(1) Any person to wilfully render or furnish a false or fraudulent report, statement or record required under this act;

(2) Any person to deliver into a primary trade channel without proper authority any commodity upon which a proration program shall have been instituted;

(3) Any handler, dealer or carrier to receive or have in his possession, within this State, without proper authority any commodity upon which a proration program has been instituted;

(4) Any person to deliver or to attempt to deliver any commodity that has been diverted under the provisions of any proration program into any channel of trade other than that into which diversion has been ordered;

(5) Any person to aid or abet in the commission of any of the acts specified in this section, and each infraction shall constitute a separate and distinct offense.

Common
carriers
exempted

The provisions of this section shall not apply to a common carrier operating over a regular route or between fixed termini where such shipment is made by such common carrier in good faith and in accordance with its duties as a common carrier and where a record of every such shipment within or from this State is kept by such common carrier showing the date of shipment, character and quality of shipment, origin and destination of such shipment, and the names of the consignor and the consignee. Such record shall be open to inspection at all reasonable hours by or on the written order of the official or administrative authority charged with the enforcement of this act or any marketing program instituted thereunder.

(Added by Ch. 471, Stats. 1935; amended by Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Termination
of proration
program

SEC. 23. After the institution of any proration program, such proration program shall be terminated when there is filed with the commission an application for its termination signed by not less than 40 per cent of the producers, and by the owners of 40 per cent of the producing factors of the industry within the zone in which the program is effective. The signatures of the producers and owners upon the application shall be those of the producers and owners whose names appear on the list or lists provided for in Section 11 or on any corrected list which the commission shall have had prepared during the existence of the program, or their successors in interest. Each petitioner shall upon affixing his signature thereto write in the date of signing, and no signature to such petition shall be

valid for any purpose if affixed thereto more than six months prior to the filing of such application with the commission. Such petition shall be accompanied by a good and sufficient undertaking in an amount equal to the probable cost of conducting said hearing. A hearing must be held upon the petition to determine the sufficiency of the signatures thereto, which hearing must be held within 30 days after the presentation of the petition. If upon such hearing, it shall be established that the petition to terminate is signed by said required 40 per cent of such producers and by the owners of 40 per cent of the producing factors, the commission shall thereupon terminate the program; provided, that any program on a seasonal crop shall not be terminated except at the end of its marketing season.

In such case the cost of conducting such hearing shall be paid from the funds of the program to the extent that they are available and thereafter from the undertaking. In the event the petition be found insufficiently signed, the entire cost of conducting such hearing shall be paid from the undertaking. In the event of the termination of a program, any funds remaining for the use of the program committee not otherwise disposed of by the provisions of this act shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

The director, on behalf of the commission, may at any time initiate an investigation to determine whether or not the facts specified in Section 10 hereof continue to exist. Upon a finding that any one or more of the prerequisite facts no longer exist, the commission shall terminate or suspend said program. In no case shall any program on a seasonal crop be terminated or suspended except at the end of its marketing season.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Chs. 603 and 1186, Stats. 1941.)

SEC. 24. Any person who shall possess, market, handle or transport any commodity in violation of any provision of an original or modified proration program approved and made effective or in violation of any rule or regulation adopted by any program committee and approved by the director may be enjoined by the director or by the zone affected with the approval of the director in an action brought in the superior court for the county in which any of such violations is alleged to be occurring. There may be enjoined in the same proceeding any number of defendants alleged to be violating the same program although their actual violations of the program may be separate and distinct and occur in different counties. In any action for injunction brought hereunder, the procedure shall be governed by the provisions of Chapter 3, Title 7, Part 2 of the Code of Civil Procedure of the State of California.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1186, Stats. 1941.)

Penalties

SEC. 25. Any person who violates any provision of a proration program approved and made effective or who violates any rule or regulation adopted by any program committee and approved by the director shall be liable civilly in an amount not to exceed a sum of five hundred dollars (\$500) for each and every violation to be recovered by the director or by the zone affected in an action brought with the approval of the director in any court of competent jurisdiction. All sums recovered under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Alteration
of zone
boundaries

SEC. 25.1. Any other area or areas within the State of California producing the same kind or variety of agricultural commodity as a proration zone already established under this act, and competing with such proration zone, may be annexed to such already established proration zone in the following manner:

The area shall be organized as a proration zone and a proration program formulated in the same manner as any other zone, except that the proration and marketing programs shall be identical with those of the existing zone and all rules and regulations shall apply alike to both zones. At the end of the current marketing season the two zones shall be consolidated by order of the commission and thereafter shall constitute one zone. When an additional area or areas are added to a proration zone the existing program committee of the original zone shall function until the end of the current marketing season, at which time a new committee shall be appointed to represent the entire area as provided for in Sections 15 and 18 of this act.

(Added by Ch. 471, Stats. 1935; amended by Ch. 894, Stats. 1939.)

Appropri-
ation

SEC. 26. There is hereby appropriated out of any funds in the State Treasury not otherwise appropriated the sum of ten thousand dollars (\$10,000) to be expended by the commission when, as and if necessary in the performance of the duties herein imposed upon it. Said sum shall constitute a loan to said commission and shall be repaid in 10 equal annual installments without interest.

Separation
clause

SEC. 27. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The Legislature hereby declares that it would have passed each provision of this act irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases, as provisions hereof, be declared unconstitutional.

(Added by Ch. 471, Stats. 1935.)

SEC. 28. The director and the Agricultural Prorate Advisory Commission, upon the effective date of this act, shall succeed to and are hereby vested with all the powers, duties, jurisdiction and responsibilities of the Agricultural Prorate Commission. • The Agricultural Prorate Commission shall, immediately upon the effective date of this act, deliver to the director all books, records, documents and all other property of any kind in its possession. The Agricultural Prorate Commission Fund is hereby abolished. All money in said fund on the effective date of this act shall be transferred to the Department of Agriculture Fund. Any rebate or other payment payable from the Agricultural Prorate Commission Fund shall after the effective date of this act be paid from the Department of Agriculture Fund.

Transfer of
powers and
funds

(Added by Ch. 894, Stats. 1939.)

SEC. 29. This act shall be known and may be cited as the Title
Agricultural Prorate Act.

(Added by Ch. 894, Stats. 1939.)

SEC. 30. All proration programs in effect at the effective date of this act and all zones in existence for the administration of such programs shall remain in existence and in full force and effect and shall be subject to termination, suspension and amendment in the manner in this act provided and shall be administered in accordance with the provisions hereof.

Continuation
existing
program

Any petition for termination filed before the effective date of this amendatory act shall not be affected by this act, but, if not finally determined, all subsequent proceedings on such petition shall be in conformity with this amendatory act.

(Added by Ch. 894, Stats. 1939.)

SUPREME COURT OF THE UNITED STATES.

No. 46.—OCTOBER TERM, 1942.

W. B. Parker, Director of Agriculture,
Agricultural Prorate Advisory Com-
mission; Raisin Proration Zone No.
1, et al., Appellants,

vs.

Porter L. Brown.

} Appeal from the District
Court of the United
States for the Southern
District of California.

[January 4, 1943.]

Mr. Chief Justice STONE delivered the opinion of the Court.

The questions for our consideration are whether the marketing program adopted for the 1940 raisin crop under the California Agricultural Prorate Act¹ is rendered invalid (1) by the Sherman Act, or (2) by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U. S. C. §§ 602, *et seq.*, or (3) by the Commerce Clause of the Constitution.

Appellee, a producer and packer of raisins in California, brought this suit in the district court to enjoin appellants—the State Director of Agriculture, Raisin Proration Zone No. 1, the members of the State Agricultural Prorate Advisory Commission and of the Program Committee for Zone No. 1, and others charged by the statute with the administration of the Prorate Act—from enforcing, as to appellee, a program for marketing the 1940 crop of raisins produced in “Raisin Proration Zone No. 1”. After a trial upon oral testimony, a stipulation of facts and certain exhibits, the district court held that the 1940 raisin marketing program was an illegal interference with and undue burden upon interstate commerce and gave judgment for appellee granting the injunction prayed for. 39 F. Supp. 895. The case was tried by a district court of three judges and comes here on appeal under §§ 266 and 238 of the Judicial Code as amended, 28 U. S. C. §§ 380, 345.

As appears from the evidence and from the findings of the district court, almost all the raisins consumed in the United States,

¹ Act of June 5, 1933, ch. 754, Statutes of California of 1933, as amended by chs. 471 and 743, Statutes of 1935; ch. 6, Extra Session, 1938; chs. 363, 548 and 894, Statutes of 1939; and chs. 603, 1150 and 1186, Statutes of 1941. Its constitutionality under both Federal and State Constitutions was sustained by the California Supreme Court in *Agricultural Prorate Commission v. Superior Court*, 5 Cal. 2d 550.

and nearly one-half of the world crop, are produced in Raisin Proration Zone No. 1. Between 90 and 95 per cent of the raisins grown in California are ultimately shipped in interstate or foreign commerce.

The harvesting and marketing of the crop in California follows a uniform procedure. The grower of raisins picks the bunches of grapes and places them for drying on trays laid between the rows of vines. When the grapes have been sufficiently dried he places them in "sweat boxes" where their moisture content is equalized. At this point the curing process is complete. The growers sell the raisins and deliver them in the "sweat boxes" to handlers or packers whose plants are all located within the Zone. The packers process them at their plants and then ship them in interstate commerce. Those raisins which are to be marketed in clusters are sometimes merely packed, unstemmed, in suitable containers, but are more often cleaned, fumigated, and, when necessary, steamed to make the stems pliable. Most of the raisins are not sold in clusters; such raisins are stemmed before packing, and most packers also clean, grade and sort them. One variety is also seeded before packing.

The packers sell their raisins through agents, brokers, jobbers and other middlemen, principally located in other states or foreign countries. Until he is ready to ship the raisins the packer stores them in the form in which they have been received from producers. The length of time that the raisins remain at the packing plants before processing and shipping varies from a few days up to two years, depending upon the packer's current supply of raisins and the market demand. The packers frequently place orders with producers for fall delivery, before the crop is harvested, and at the same time enter into contracts for the sale of raisins to their customers. In recent years most packers have had a substantial "carry over" of stored raisins at the end of each crop season, which are usually marketed before the raisins of the next year's crop are marketed.

The California Agricultural Prorate Act authorizes the establishment, through action of state officials, of programs for the marketing of agricultural commodities produced in the state, so as to restrict competition among the growers and maintain prices in the distribution of their commodities to packers. The declared purpose of the Act is to "conserve the agricultural wealth of the State" and to "prevent economic waste in the marketing

of agricultural products' of the state. It authorizes [§3] the creation of an Agricultural Prorate Advisory Commission of nine members, of which a state official, the Director of Agriculture, is ex-officio a member. The other eight members are appointed for terms of four years by the Governor and confirmed by the Senate, and are required to take an oath of office. [§4].

Upon the petition of ten producers for the establishment of a prorate marketing plan for any commodity within a defined production zone [§8], and after a public hearing [§9], and after making prescribed economic findings [§10] showing that the institution of a program for the proposed zone will prevent agricultural waste and conserve agricultural wealth of the state without permitting unreasonable profits to producers, the Commission is authorized to grant the petition. The Director, with the approval of the commission, is then required to select a program committee from among nominees chosen by the qualified producers within the zone, to which he may add not more than two handlers or packers who receive the regulated commodity from producers for marketing. [§§11, 14, 15].

The program committee is required [§15] to formulate a proration marketing program for the commodity produced in the zone, which the Commission is authorized to approve after a public hearing and a "finding that the program is reasonably calculated to carry out the objectives of the Act." The Commission may, if so advised, modify the program and approve it as modified. If the proposed program, as approved by the Commission, is consented to by 65 per cent in number of producers in the zone owning 51 per cent of the acreage devoted to production of the regulated crop, the Director is required to declare the program instituted. [§16].

Authority to administer the program, subject to the approval of the Director of Agriculture, is conferred on the program committee. [§§6, 18, 22.] Section 22.5 declares that it shall be a misdemeanor, which is punishable by fine and imprisonment [~~Crim~~ Penal Code §19], for any producer to sell or any handler to receive or possess without proper authority any commodity for which a proration program has been instituted. Like penalty is imposed upon any person who aids or abets in the commission of any of the acts specified in the section, and it is declared that each "infraction shall constitute a separate and distinct offense". Section 25 imposes a civil liability of \$500 "for each and every violation" of any provision of a proration program.

The seasonal proration marketing program for raisins, with which we are now concerned, became effective on September 7, 1940. This provided that the program committee should classify raisins as "standard", "substandard", and "inferior"; "inferior" raisins are those which are unfit for human consumption, as defined in the Federal Food, Drug and Cosmetic Act, 21 U. S. C. §§ 301. *et seq.* The committee is required to establish receiving stations within the zone to which every producer must deliver all raisins which he desires to market. The raisins are graded at these stations. All inferior raisins are to be placed in the "inferior raisin pool", to be disposed of by the committee "only for assured by-product and other diversion purposes". All substandard raisins, and at least 20 per cent of the total standard and substandard raisins produced, must be placed in a "surplus pool". Raisins in this pool may also be disposed of only for "assured by-product and other diversion purposes", except that under certain circumstances the program committee may transfer standard raisins from the surplus pool to the stabilization pool. Fifty per cent of the crop must be placed in a "stabilization pool".

Under the program the producer is permitted to sell the remaining 30 per cent of his standard raisins, denominated "free tonnage", through ordinary commercial channels, subject to the requirement that he obtain a "secondary certificate" authorizing such marketing and pay a certificate fee of \$2.50 for each ton covered by the certificate. Certification is stated to be a device for controlling "the time and volume of movement" of free tonnage into such ordinary commercial channels. Raisins in the stabilization pool are to be disposed of by the committee "in such manner as to obtain stability in the market and to dispose of such raisins", but no raisins (other than those subject to special lending or pooling arrangements of the Federal Government) can be sold by the committee at less than the prevailing market price for raisins of the same variety and grade on the date of sale. Under the program the committee is to make advances to producers of from \$25 to \$27.50 a ton, depending upon the variety of raisins, for deliveries into the surplus pool, and from \$50 to \$55 a ton for deliveries into the stabilization pool. The committee is authorized to pledge the raisins held in those pools in order to secure funds to finance pool operations and make advances to growers.

Appellee's bill of complaint challenges the validity of the proration program as in violation of the Commerce Clause and the

Sherman Act; in support of the decree of the district court he also urges that it conflicts with and is superseded by the Federal Agricultural Marketing Agreement Act of 1937. The complaint alleges that he is engaged within the marketing zone both in producing and in purchasing and packing raisins for sale and shipment interstate; that before the adoption of the program he had entered into contracts for the sale of 1940 crop raisins; that unless enjoined appellants will enforce the program against respondent by criminal prosecutions and will prevent him from marketing his 1940 crop, from fulfilling his sales contracts, and from purchasing for sale and selling in interstate commerce raisins of that crop.

Appellee's allegations of irreparable injury are in general terms, but it appears from the evidence that he had produced 200 tons of 1940 crop raisins; that he had contracted to sell 762½ tons of the 1940 crop; that he had dealt in 2,000 tons of raisins of the 1939 crop, and expected to sell, if the challenged program were not in force, 3,000 tons of the 1940 crop at \$60 a ton; that the pre-season price to growers of raisins of the 1940 crop, before the program became effective, was \$45 per ton, and that immediately afterward it rose to \$55 per ton or higher. It also appears that the district court having awarded the final injunction prayed, appellee has proceeded with the marketing of his 1940 crop and has disposed of all except twelve tons, which remain on hand. Although the district court found that the amount in controversy exceeds \$3,000, we are of opinion that as the complaint assails the validity of the program under the anti-trust laws, 15 U. S. C. §§ 1-33, the suit is one "arising under" a "law regulating commerce" and allegation and proof of the jurisdictional amount are not required. 28 U. S. C. §§ 41(1), (8); *Peyton v. Railway Express Agency*, 316 U. S. 350. The majority of the Court is also of opinion that the suit is within the equity jurisdiction of the court since the complaint alleges and the evidence shows threatened irreparable injury to respondent's business and threatened prosecutions by reason of his having marketed his crop under the protection of the district court's decree.

Validity of the Prorate Program under the Sherman Act.

Section 1 of the Sherman Act, 15 U. S. C. § 1, makes unlawful "every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States". And § 2, 15 U. S. C. § 2, makes it unlawful to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the

several States". We may assume for present purposes that the California prorate program would violate the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons, individual or corporate. We may assume also, without deciding, that Congress could, in the exercise of its commerce power, prohibit a state from maintaining a stabilization program like the present because of its effect on interstate commerce. Occupation of a legislative "field" by Congress in the exercise of a granted power is a familiar example of its constitutional power to suspend state laws. See *Adams Express Co. v. Croninger*, 226 U. S. 491, 505; *Napier v. Atlantic Coast Line*, 272 U. S. 605, 607; *Missouri Pacific v. Porter*, 273 U. S. 341; *Illinois Gas Co. v. Public Service Co.*, 314 U. S. 498, 510.

But it is plain that the prorate program here was never intended to operate by force of individual agreement or combination. It derived its authority and its efficacy from the legislative command of the state and was not intended to operate or become effective without that command. We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.

The Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state. The Act is applicable to "persons" including corporations [§ 7], and it authorizes suits under it by persons and corporations. [§ 15]. A state may maintain a suit for damages under it, *Georgia v. Evans*, 316 U. S. 159, but the United States may not, *United States v. Cooper Corp.*, 312 U. S. 600—conclusions derived not from the literal meaning of the words "person" and "corporation" but from the purpose, the subject matter, the context and the legislative history of the statute.

There is no suggestion of a purpose to restrain state action in the Act's legislative history. The sponsor of the bill which was ultimately enacted as the Sherman Act declared that it prevented only "business combinations". 21 Cong. Rec. 2562, 2457; see also at 2459, 2461. That its purpose was to suppress combinations to restrain competition and attempts to monopolize by individ-

uals and corporations, abundantly appears from its legislative history. See *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 492-93 and n. 15; *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271, affirmed 175 U. S. 211; *Standard Oil Co. v. United States*, 221 U. S. 1, 54-58.

True, a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful, *Northern Securities Co. v. United States*, 193 U. S. 197, 332, 344-47; and we have no question of the state or its municipality becoming a participant in a private agreement or combination by others for restraint of trade, cf. *Union Pacific R. Co. v. United States*, 313 U. S. 450. Here the state command to the Commission and to the program committee of the California Prorate Act is not rendered unlawful by the Sherman Act since, in view of the latter's words and history, it must be taken to be a prohibition of individual and not state action. It is the state which has created the machinery for establishing the prorate program. Although the organization of a prorate zone is proposed by producers, and a prorate program, approved by the Commission, must also be approved by referendum of producers, it is the state, acting through the Commission, which adopts the program and which enforces it with penal sanctions, in the execution of a governmental policy. The prerequisite approval of the program upon referendum by a prescribed number of producers is not the imposition by them of their will upon the minority by force of agreement or combination which the Sherman Act prohibits. The state itself exercises its legislative authority in making the regulation and in prescribing the conditions of its application. The required vote on the referendum is one of these conditions. Compare *Curran v. Wallace*, 306 U. S. 1, 16; *Hampton & Co. v. United States*, 276 U. S. 394, 407; *Wickard v. Filburn*, 317 U. S. —.

The state in adopting and enforcing the prorate program made no contract or agreement and entered into no conspiracy in restraint of trade or to establish monopoly but, as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit. *Olsen v. Smith*, 195 U. S. 332, 344-45; cf. *Lowenstein v. Evans*, 69 Fed. 908, 910.

Validity of the Program Under the Agricultural Marketing Agreement Act

The Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U. S. C. §§ 601, et seq., authorizes the Secretary of Agri-

culture to issue orders limiting the quantity of specified agricultural products, including fruits, which may be marketed "in the current of . . . or so as directly to burden, obstruct or affect interstate or foreign commerce". Such orders may allot the amounts which handlers may purchase from any producer by means which equalize the amount marketed among producers; may provide for the control and elimination of surpluses and for the establishment of reserve pools of the regulated produce. [§ 8c(6)]. The federal statute differs from the California Prorate Act in that its sanction falls upon handlers alone while the state act [§ 22.5(3)] applies to growers and extends also to handlers so far as they may unlawfully receive or have in their possession within the state any commodity subject to a prorate program.

We may assume that the powers conferred upon the Secretary would extend to the control of surpluses in the raisin industry through a pooling arrangement such as was promulgated under the California Prorate Act in the present case. See *United States v. Rock Royal Co-op.*, 307 U. S. 533; *Curran v. Wallace*, *supra*. We may assume also that a stabilization program adopted under the Agricultural Marketing Agreement Act would supersede the state act. But the federal act becomes effective only if a program is ordered by the Secretary. Section 8c(3) provides that whenever the Secretary of Agriculture "has reason to believe" that the issuance of an order will tend to effectuate the declared policy of the Act with respect to any commodity he shall give due notice of an opportunity for a hearing upon a proposed order, and § 8c(4) provides that after the hearing he shall issue an order if he finds and sets forth in the order that its issuance will tend to effectuate the declared policy of the Act with respect to the commodity in question. Since the Secretary has not given notice of hearing and has not proposed or promulgated any order regulating raisins it must be taken that he has no reason to believe that issuance of an order will tend to effectuate the policy of the Act.

The Secretary, by § 10(i), is authorized "in order to effectuate the declared policy" of the Act, and "in order to obtain uniformity in the formulation, administration and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities," to confer and cooperate with duly constituted authorities of any state. From this and the whole structure of the Act, it would seem that it contemplates that its policy may

be effectuated by a state program either with or without the promulgation of a federal program by order of the Secretary. Cf. *United States v. Rock Royal Cooperative, Inc.*, *supra*.² It follows that the adoption of an adequate program by the state may be deemed by the Secretary a sufficient ground for believing that the policies of the federal act will be effectuated without the promulgation of an order.

It is evident, therefore, that the Marketing Act contemplates the existence of state programs at least until such time as the Secretary shall establish a federal marketing program, unless the state program in some way conflicts with the policy of the federal act. The Act contemplates that each sovereign shall operate "in its own sphere but can exert its authority in conformity rather than in conflict with that of the other". H. Rep. No. 1241, 74th Cong., 1st Sess. pp. 22-23; S. Rep. 1011, 74th Cong., 1st Sess. p. 15.² The only suggested possibility of conflict is between the declared purposes of the two acts. The object of the federal statute is stated to be the establishment, by exercise of the power conferred on the Secretary, of "orderly marketing conditions for agricultural commodities in interstate commerce" such as will tend to establish "parity prices" for farm products,³ but with the further purpose that, in the interest of consumers, current consumptive demand is to be considered and that no action shall be taken for the purpose of maintaining prices above the parity level. [§ 2].

² See also 79 Cong. Rec. 9470, 11149-50, 11153; Hearings Before the Senate Committee on Agriculture and Forestry on S. 1807, (March, 1935) 29, 73; Hearings Before the House Committee on Agriculture (Feb.-March, 1935) 53, 178-9. The Agricultural Marketing Agreement Act of 1937 was for the most part a reenactment of certain provisions of the Agricultural Adjustment Act of 1933, 48 Stat. 31, as amended in 1935, 49 Stat. 753. Sec. 2(i) was first introduced in 1935, and reenacted without change in 1937.

³ A "parity" price is one which will "give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period". 7 U. S. C. § 602(1). The parity price is computed by multiplying an index of prices paid by farmers for goods used in farm production, and for family living expenses, together with real estate taxes and interest on farm indebtedness, by the average price during the base period of the commodity in question. See Dept. of Agriculture, Parity Prices, What They Are and How They Are Calculated (1942). The base period for commodities other than tobacco and potatoes is August 1909-July 1914. However, by 7 U. S. C. § 608e the period of August 1909-July 1929 or a part thereof may be used for any commodity as to which the Secretary finds and proclaims that adequate statistics for the 1909-14 period are not available. By proclamation dated June 26, 1942, the Secretary designated the period 1919-1929 as the base period for raisins. 7 Fed. Reg. 4867.

The declared objective of the California Act is to prevent excessive supplies of agricultural commodities from "adversely affecting" the market, and although the statute speaks in terms of "economic stability" and "agricultural waste" rather than of price, the evident purpose and effect of the regulation is to "conserve agricultural wealth of the state" by raising and maintaining prices, but "without permitting unreasonable profits to producers" [§ 10]. The only possibility of conflict would seem to be ~~between a State program which would raise prices beyond the parity price prescribed by the Federal Act~~ ⁴ a condition which has not occurred.

That the Secretary has reason to believe that the state act will tend to effectuate the policies of the federal act so as not to require the issuance of an order under the latter is evidenced by the approval given by the Department of Agriculture to the state program by the loan agreement between the state and the Commodity Credit Corporation.⁵ By § 302 of the Agricultural Adjustment Act of 1938, 52 Stat. 43, 7 U. S. C. § 1302(a), the Commodity Credit Corporation is authorized "upon the recommendation of the Secretary and with the approval of the President, to make available loans on agricultural commodities The "amount, terms, and conditions" of such loans are to be "fixed by the Secretary, subject to the approval of the Corporation and the President." Under this authority the Commodity Credit Corporation made loans of \$5,146,000 to Zone No. 1, secured by a pledge of 109,000 tons of 1940 crop raisins in the surplus and stabilization pools. These

⁴ The parity price for raisins on June 15, 1942, as published by the Department of Agriculture was \$100.51 per ton. Preliminary figures show the average price for the 1941-42 crop to be \$80.60. Parity Prices, What they Are and How They are Computed, *supra*, vii. Parity prices for raisins for previous years are not published. However they may be computed from the base period price of \$105.80 and the indices of prices paid by farmers published by the Department of Agriculture in the statistical publications cited *infra*, note 9. Such computations for 1933 and subsequent years, supplied by the Department of Agriculture, indicate that while the price received by the farmer for the 1940 crop was \$57.60 the parity price for 1940 was \$80.41 and for 1941 was \$86.76. They further indicate that raisin prices have not since 1933 equalled parity and that the field prices for all crops prior to that of 1941 have been from \$15 to \$40 per ton below parity.

⁵ The Commodity Credit Corporation was created by Executive Order No. 6340, October 16, 1933. It has been continued in existence by Acts of Congress, 49 Stat. 4; 50 Stat. 5; 53 Stat. 510. By Reorganization Plan No. I, 53 Stat. 1429, approved by Act of Congress, 53 Stat. 513, and effective July 1, 1939, the Corporation was transferred to the Department of Agriculture, to be administered in such department under the general direction and supervision of the Secretary of Agriculture. By Executive Order No. 8219, Aug. 7, 1939, 4 Fed. Reg. 3565, exclusive voting rights in its capital stock were vested in the Secretary.

loans were ultimately liquidated by sales of 76,000 tons to packers and 33,000 tons to the Federal Surplus Marketing Administration, an agency of the Department of Agriculture,⁶ for relief distribution and for export under the Lend-Lease program.⁷ The loans were conditional upon the adoption by the state of the present seasonal marketing program. We are informed by the Government, which at our request filed a brief *amicus curiae*, that under the loan agreement prices and sales policies as to the pledged raisins were to be controlled by a committee appointed by the Secretary, and that officials of the Department of Agriculture collaborated in drafting the 1940 state raisin program.

Section 302 of the Agricultural Adjustment Act of 1938 requires the Commodity Credit Corporation to make non-recourse loans to producers of certain agricultural products at specified percentages of the parity price, and authorizes loans on any agricultural commodity. The Government informs us that in making loans under the latter authority, § 302 has been construed by the Department of Agriculture as requiring the loans to be made only in order to effectuate the policy of federal agricultural legislation.⁸ Section 2 of the Agricultural Adjustment Act of 1938 declares it to be the policy of Congress to achieve the statutory objectives through loans. The Agricultural Adjustment Act of 1938 and the Agricultural Marketing Agreement Act of 1937 were both derived from the Agricultural Adjustment Act of 1933. 48 Stat. 31, and

⁶ The Surplus Marketing Administration was created by Reorganization Plan No. III, 45 Stat. 1232, approved 54 Stat. 231, effective April 11, 1940, as a consolidation of the Division of Marketing and Marketing Agreements of the Agricultural Adjustment Administration, and the Federal Surplus Commodities Corporation. The Surplus Commodities Corporation was incorporated on October 4, 1933, under the name of the Federal Surplus Relief Corporation. Its existence as "an agency of the United States under the direction of the Secretary of Agriculture" was continued by Acts of Congress, 50 Stat. 323; 52 Stat. 38. The members of the Corporation are the Secretary of Agriculture, the Administrator of the Agricultural Adjustment Administration, and the Governor of the Farm Credit Administration.

As successor to the Corporation the Surplus Marketing Administration exercises the authority given by § 32 of the Agricultural Adjustment Act of 1935, 7 U. S. C. § 612c, to use 30% of annual gross customs receipts to encourage the exportation, and the domestic consumption by persons in low income groups, of agricultural commodities, and to reestablish farmers' purchasing power. As successor to the Division of Markets and Marketing Agreements, the Administration is charged with the enforcement of the Agricultural Marketing Agreement Act of 1937.

⁷ Report of the President of the Commodity Credit Corporation (1941) 14, 21; Wm. J. Cecil (Zone Agent, Raisin Proration Zone No. 1), The 1940 Raisin Program, 30 Calif. Dept. of Agriculture Bulletin 46.

⁸ See also Report of the President of the Commodity Credit Corporation (1940) 4, 6.

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are coordinate parts of a single plan for raising farm prices to parity levels. The conditions imposed by the Secretary of Agriculture in the loan agreement with the State of California, and the collaboration of federal officials in the drafting of the program, must be taken as an expression of opinion by the Department of Agriculture that the state program thus aided by the loan is consistent with the policies of the Agricultural Adjustment and Agricultural Marketing Agreement Acts. We find no conflict between the two acts and no such occupation of the legislative field by the mere adoption of the Agricultural Marketing Agreement Act, without the issuance of any order by the Secretary putting it into effect, as would preclude the effective operation of the state act.

We have no occasion to decide whether the same conclusion would follow if the state program had not been adopted with the collaboration of officials of the Department of Agriculture and aided by loans from the Commodity Credit Corporation recommended by the Secretary of Agriculture.

Validity of the Program under the Commerce Clause.

The court below found that approximately 95 per cent of the California raisin crop finds its way into interstate or foreign commerce. It is not denied that the proration program is so devised as to compel the delivery by each producer, including appellee, of over two-thirds of his 1940 raisin crop to the program committee, and to subject it to the marketing control of the committee. The program, adopted through the exercise of the legislative power delegated to state officials, has the force of law. It clothes the committee with power and imposes on it the duty to control marketing of the crop so as to enhance the price or at least to maintain prices by restraints on competition of producers in the sale of their crop. The program operates to eliminate competition of the producers in the terms of sale of the crop, including price. And since 95 per cent of the crop is marketed in interstate commerce the program may be taken to have a substantial effect on the commerce, in placing restrictions on the sale and marketing of a product to buyers who eventually sell and ship it in interstate commerce.

The question is thus presented whether in the absence of congressional legislation prohibiting or regulating the transactions affected by the state program, the restrictions which it imposes upon the sale within the state of a commodity by its producer to a processor who contemplates doing, and in fact does work upon the

commodity before packing and shipping it in interstate commerce, violate the Commerce Clause.

The governments of the states are sovereign within their territory save only as they are subject to the prohibitions of the Constitution or as their action in some measure conflicts with powers delegated to the National Government, or with Congressional legislation enacted in the exercise of those powers. This Court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken. *Minnesota Rate Cases*, 230 U. S. 352, 399-400; *South Carolina Highway Dept. v. Barnwell Bros.*, 303 U. S. 177, 187, et seq.; *California v. Thompson*, 313 U. S. 109, 113-14 and cases cited; *Duckworth v. Arkansas*, 314 U. S. 390. A fortiori there are many subjects and transactions of local concern not themselves interstate commerce or a part of its operations which are within the regulatory and taxing power of the states, so long as state action serves local ends and does not discriminate against the commerce, even though the exercise of those powers may materially affect it. Whether we resort to the mechanical test sometimes applied by this Court in determining when interstate commerce begins with respect to a commodity grown or manufactured within a state and then sold and shipped out of it—or whether we consider only the power of the state in the absence of Congressional action to regulate matters of local concern, even though the regulation affects or in some measure restricts the commerce—we think the present regulation is within state power.

In applying the mechanical test to determine when interstate commerce begins and ends (see *Federal Compress Co. v. McLean*, 291 U. S. 17, 21 and cases cited; *Minnesota v. Blasius*, 290 U. S. 1 and cases cited) this Court has frequently held that for purposes of local taxation or regulation "manufacture" is not interstate commerce even though the manufacturing process is of slight extent. *Crescent Oil Co. v. Mississippi*, 257 U. S. 129; *Oliver Iron Co. v. Lord*, 262 U. S. 172; *Utah Power & Light Co. v. Pfof*, 286 U. S. 165; *Hope Gas Co. v. Hall*, 274 U. S. 284; *Heisler v. Thomas Colliery*, 260 U. S. 245; *Champlin Refining Co. v. Commission*, 286 U. S. 210; *Bayside Fish Co. v. Gentry*, 297 U. S. 422. And such regulations of manufacture have been sustained where, aimed at matters of local concern, they had the effect of preventing commerce in the regulated article. *Kidd v. Pearson*, 128 U. S. 1;

Champlin Refining Co. v. Commission, *supra*; *Sligh v. Kirkwood*, 237 U. S. 52; see *Capital City Dairy Co. v. Ohio*, 183 U. S. 238, 245; *Thompson v. Consolidated Gas Co.*, 300 U. S. 55, 77; cf. *Bay-side Fish Co. v. Gentry*, *supra*. A state is also free to license and tax intrastate buying where the purchaser expects in the usual course of business to resell in interstate commerce. *Uhassaniol v. Greenwood*, 291 U. S. 584. And no case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will, in the normal course of business, sell and ship them in interstate commerce.

All of these cases proceed on the ground that the taxation or regulation involved, however drastically it may affect interstate commerce, is nevertheless not prohibited by the Commerce Clause where the regulation is imposed before any operation of interstate commerce occurs. Applying that test, the regulation here controls the disposition, including the sale and purchase, of raisins before they are processed and packed preparatory to interstate sale and shipment. The regulation is thus applied to transactions wholly intrastate before the raisins are ready for shipment in interstate commerce.

It is for this reason that the present case is to be distinguished from *Lemke v. Farmers Grain Co.*, 258 U. S. 50, and *Shafer v. Farmers Grain Co.*, 268 U. S. 189, on which appellee relies. There the state regulation held invalid was of the business of those who purchased grain within the state for immediate shipment out of it. The Court was of opinion that the purchase of the wheat for shipment out of the state without resale or processing was a part of the interstate commerce. Compare *Chassaniol v. Greenwood*, *supra*.

This distinction between local regulation of those who are not engaged in commerce, although the commodity which they produce and sell to local buyers is ultimately destined for interstate commerce, and the regulation of those who engage in the commerce by selling the product interstate, has in general served, and serves here, as a ready means of distinguishing those local activities which, under the Commerce Clause, are the appropriate subject of state regulation despite their effect on interstate commerce. But courts are not confined to so mechanical a test. When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state

is to be attained by the accommodation of the competing demands of the state and national interests involved. See *Di Santo v. Pennsylvania*, 273 U. S. 34, 44 (with which compare *California v. Thompson*, *supra*); *South Carolina Highway Dept. v. Barnwell Bros.*, *supra*; *Milk Board v. Eisenberg Co.*, 306 U. S. 346; *Illinois Gas Co. v. Public Service Comm.*, 314 U. S. 498, 504-5.

Such regulations by the state are to be sustained, not because they are "indirect" rather than "direct", see *Di Santo v. Pennsylvania*, *supra*; cf. *Wickard v. Filburn*, *supra*, not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress. Because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause. See *Minnesota Rate Cases*, *supra*, 398-412; *Thompson v. California*, *supra*, 113. There may also be, as in the present case, local regulations whose effect upon the national commerce is such as not to conflict but to coincide with a policy which Congress has established with respect to it.

Examination of the evidence in this case and of available data of the raisin industry in California, of which we may take judicial notice, leaves no doubt that the evils attending the production and marketing of raisins in that state present a problem local in character and urgently demanding state action for the economic protection of those engaged in one of its important industries.⁹ Between 1914 and 1920 there was a spectacular rise in price of ail

⁹ The principal statistical sources are U. S. Tariff Commission, *Grapes, Raisins and Wines*, Report No. 134, Second Series, issued pursuant to 19 U. S. C. § 1332, and the following publications of the U. S. Department of Agriculture: *Yearbook of Agriculture* (published annually until 1936); *Agricultural Statistics* (published annually since 1936); *Crops and Markets* (published quarterly); *Season Average Prices and Value of Production, Principal Crops*, 1940 and 1941 (Dec. 18, 1941). For general discussions of the economic status of the raisin industry see *Grapes, Raisins and Wines*, *supra*; Shear and Gould, *Economic Status of the Grape Industry*, University of California, Agricultural Experiment Station Bulletin No. 429 (1927); Shear and Howe, *Factors Affecting California Raisin Sales and Prices, 1922-29*, Giannini Foundation of Agricultural Economics, Paper No. 20 (1931).

types of California grapes, including raisin grapes. The price of raisins reached its peak, \$235 per ton, in 1921, and was followed by large increase in acreage with accompanying reduction in price. The price of raisins in most years since 1922 has ranged from \$40 to \$60 per ton but acreage continued to increase until 1926 and production reached its peak, 1,433,000 tons of raisin grapes and 290,000 tons of raisins, in 1938. Since 1920 there has been a substantial carry over of 30 to 50% of each year's crop. The result has been that at least since 1934 the industry, with a large increase in acreage and the attendant fall in price, has been unable to market its product and has been compelled to sell at less than parity prices and in some years at prices regarded by students of the industry as less than the cost of production.¹⁰

The history of the industry at least since 1929 is a record of a continuous search for expedients which would stabilize the marketing of the raisin crop and maintain a price standard which would bring fair return to the producers.¹¹ It is significant of the relation of the local interest in maintaining this program to the national interest in interstate commerce, that throughout the period from 1929 until the adoption of the prorate program for the 1940 raisin crop, the national government has contributed to these efforts either by its establishment of marketing programs pursuant to Act of Congress or by aiding programs sponsored by the state. Local cooperative market stabilization programs for raisins in 1929 and 1930 were approved by the Federal Farm Board which supported them with large loans.¹² In 1934 a marketing agreement for California raisins was put into effect under § 8(2) of the Agricultural Adjustment Act of 1933, which authorized the Secretary of Agriculture,

¹⁰ Studies made under the auspices of the University of California indicate that the cost of production of Thompson Seedless raisins, including the growers' labor, a management charge, depreciation, and interest on investment, is \$49.58 per ton on a farm yielding two tons per acre, and \$72.07 per ton on a farm yielding one ton per acre. A two-ton yield is described as "good"; a one-ton yield as "usual". Adams, Farm Management Crop Manual, University of California Syllabus Series No. 278 (1941) 142-5. Another student has computed the cost of production \$53.96 for a two-ton per acre yield, about \$65 for a 1.5 ton yield, and \$90 for a one-ton yield. Shultz, Standards of Production, Labor, Material and other Costs for Selected Crops and Livestock Enterprises, University of California Extension Service (1938) 12. Field prices for Thompson Seedless raisins were below \$49.50 in 1923, 1928, 1932, and 1938; since 1922 they have been at \$65.00 or higher in only 5 years, and have only once been as high as \$72.00. Grapes, Raisins and Wines, *supra*, 149.

For parity prices for raisins, see *supra*, note 2.

¹¹ For discussion of private efforts within the industry prior to 1929 to regulate the marketing of raisins, see Grapes, Raisins and Wines, *supra*, 153-5.

¹² See Annual Report of the Federal Farm Board (1930) 18, 73; (id. (1931) 59-61, 91; Grapes, Raisins and Wines, *supra*, 62-64; S. W. Shear, The California

as amended, 49 Stat. 528,

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in order to effectuate the Act's declared policy of achieving parity prices, to enter into marketing agreements with processors, producers and others engaged in handling agricultural commodities "in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce" ¹³

Raisin Proration Zone No. 1 was organized in the latter part of 1937. No proration program was adopted for the 1937 crop but loans of \$1,244,000 were made on raisins of that crop by the Commodity Credit Corporation. ¹⁴ In aid of a proration program adopted under the California Act for the 1938 crop, a substantial part of that crop was pledged to the Commodity Credit Corporation as security for a loan of \$2,688,000, and was ultimately sold to the Federal Surplus Commodities Corporation for relief distribution. ¹⁵ Substantial purchases of raisins of the 1939 crop were also made by Federal Surplus Commodities Corporation, although no proration program was adopted for that year. ¹⁶ In aid of the

Grape Control Plan, Giannini Foundation of Agricultural Economics, Paper No. 22 (1931); Stokdyk and West, The Farm Board (1930) 135-9. Loans of \$4,500,000 in 1929 and \$6,755,000 in 1930 were made by the Federal Farm Board. Shear, *supra*, states that the 1930 program, which provided for the formation of a single marketing agency, and the destruction or diversion to by-product use of surplus raisins, "was designed by the Federal Farm Board".

The Federal Farm Board was created by § 2 of the Agricultural Marketing Act of 1929, 46 Stat. 91, which authorized the Board to make loans to co-operative associations to aid in "the effective merchandising of agricultural commodities" (§ 7) so as to achieve the statutory objective of placing agriculture on a "basis of economic equality with other industries" (§ 1).

¹³ See U. S. Dept. of Agriculture, Agricultural Adjustment in 1934, 202. The marketing program adopted is published by the Agricultural Adjustment Administration, Department of Agriculture, as Marketing Agreement Series—Agreement No. 44, License Series, License No. 55. It was in effect from May 29, 1934 to Sept. 14, 1935. The agreement provided for the creation of a control board on which representatives of packers and growers should have an equal voice. Subject to the approval of the Secretary of Agriculture the control board could fix minimum prices to be paid growers and require a percentage of the crop to be delivered to the control board. 15% of the 1934 crop was required to be delivered to the board, and prices for that crop were fixed at \$60, \$65 and \$70 per ton for Muscat, Sultanah, and Thompson Seedless raisins respectively.

President of the

¹⁴ Report of the Commodity Credit Corporation (1940) 16. These raisins were ultimately sold to the Federal Surplus Commodities Corporation for relief distribution. *Ibid.*; Report of the Federal Surplus Commodities Corporation (1938) 16. *the President of the*

¹⁵ Report of a Commodity Credit Corporation (1940) 16; Report of the Associate Administrator of the Agricultural Adjustment Administration in Charge of the Division of Marketing and Marketing Agreements, and the President of the Federal Surplus Commodities Corporation (1939) 52. The federal loan was conditioned upon the adoption of a state proration program by which 20% of the crop was delivered into a stabilization pool.

¹⁶ Cecil, The 1940 Raisin Proration Program; *supra*, 48; Report of the Federal Surplus Commodities Corporation (1940) 6.

1940 program, as we have already noted, the Commodity Credit Corporation made loans of \$5,000,000, and 33,000 tons of the raisins pledged to it were sold to the Federal Surplus Marketing Administration.¹⁷

This history shows clearly enough that the adoption of legislative measures to prevent the demoralization of the industry by stabilizing the marketing of the raisin crop is a matter of state as well as national concern and, in the absence of inconsistent Congressional action, is a problem whose solution is peculiarly within the province of the state. In the exercise of its power the state has adopted a measure appropriate to the end sought. The program was not aimed at nor did it discriminate against interstate commerce, although it undoubtedly affected the commerce by increasing the interstate price of raisins and curtailing interstate shipments to some undetermined extent. The effect on the commerce is not greater, and in some instances was far less, than that which this Court has held not to afford a basis for denying to the states the right to pursue a legitimate state end. Cf. *Kidd v. Pearson*, *supra*; *Sligh v. Kirkwood*, *supra*; *Champlain Refining Co. v. Commission*, *supra*; *South Carolina Highway Department v. Barnwell Bros.*, *supra*, and cases cited at p. 189 and notes 4 and 5; *California v. Thompson*, *supra*, 113-15, and cases cited.

In comparing the relative weights of the conflicting local and national interests involved it is significant that Congress, by its agricultural legislation, has recognized the distressed condition of much of the agricultural production of the United States, and has authorized marketing procedures, substantially like the California prorate program, for stabilizing the marketing of agricultural products. Acting under this legislation the Secretary of Agriculture has established a large number of market stabilization programs for agricultural commodities moving in interstate commerce in various parts of the country, including seven affecting California crops.¹⁸ All involved attempts in one way or another to prevent over-production of agricultural products and excessive competition in marketing them, with price stabilization as the ultimate objective. Most if not all had a like effect in restricting shipments and raising

¹⁷ The Commodity Credit Corporation similarly made loans on the 1937, 1938, and 1940 crops of dried prunes, the loans on the 1938 and 1940 crops being in aid of proration programs which were very similar to those adopted for raisins. Report of the President of the Commodity Credit Corporation (1940) 15, 21; *id.* (1941) 13-14, 21; Report of the Surplus Marketing Administration (1941) 33-4.

or maintaining prices of agricultural commodities moving in interstate commerce.

It thus appears that whatever effect the operation of the California program may have on interstate commerce, it is one which it has been the policy of Congress to aid and encourage through federal agencies in conformity to the Agricultural Marketing Agreement Act, and § 302 of the Agricultural Adjustment Act. Nor is the effect on the commerce greater than or substantially different in kind from that contemplated by the stabilization programs authorized by federal statutes. As we have seen, the Agricultural Marketing Agreement Act is applicable to raisins only on the direction of the Secretary of Agriculture who, instead of establishing a federal program has, as the statute authorizes, cooperated in promoting the state program and aided it by substantial federal loans. Hence we cannot say that the effect of the state program on interstate commerce is one which conflicts with Congressional policy or is such as to preclude the state from this exercise of its reserved power to regulate domestic agricultural production.

We conclude that the California prorate program for the 1940 raisin crop is a regulation of state industry of local concern which, in all the circumstances of this case which we have detailed, does not impair national control over the commerce in a manner or to a degree forbidden by the Constitution.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

¹⁸ Twenty-eight such programs affecting milk, and nineteen affecting other agricultural commodities, were in effect during the fiscal year ending June 30, 1941. Report of the Surplus Marketing Administration (1941) pp. 7, 12. For discussions of the nature and purpose of these programs see the annual reports of the Agricultural Adjustment Administration; Nourse, Marketing Agreements under the A. A. A. (1935).